

12-2297pr

To be argued by:
D. B. KARRON

United States Court of Appeals
FOR THE SECOND CIRCUIT
Docket No. 12-2297



DANIEL B. KARRON,

Petitioner - Appellant,

—v.—

UNITED STATES OF AMERICA,

Respondent - Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX Volume 7 FOR THE PETITIONER - APPELLANT

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Accrual Basis

EB

CASI ENTITIES
Transaction Detail By Account
October 2001 through September 2002

MC

114 346 KA-1800

Type	Date	Num	Name	Memo	Class	Debit	Credit	Balance
General Journal	8/31/2002	OOP 83102		OOP GYM IN...	NIST ATP	20.00		1,143.46
Total 6064 · Gym Membership						1,143.46	0.00	1,143.46
6065 · Horizon								
Check	5/13/2002	NCD 527	E. Gurfein (vendor)	6065	NIST ATP	444.27		444.27
Check	7/30/2002	10351	E. Gurfein (vendor)	6065	NIST ATP	444.27		888.54
Total 6065 · Horizon						888.54	0.00	888.54
6066 · Medical Reimbursed								
General Journal	5/31/2002	MC DBK		MC EB-DOC...	NIST ATP	3,877.50		3,877.50
General Journal	5/31/2002	MC DBK		MC EB-OPTI...	NIST ATP	335.00		4,212.50
General Journal	8/31/2002	MC DBK		MC EB-DOC...	NIST ATP	9,067.00		13,279.50
General Journal	8/31/2002	MC DBK		MC EB-OPTI...	NIST ATP	405.00		13,684.50
General Journal	12/31/2001	MC DBK		MC PATRICI...	NIST ATP	2,344.50		16,029.00
General Journal	12/31/2001	MC DBK		MC KIPS BA...	NIST ATP	5.00		16,034.00
General Journal	11/1/2001	DBK 1017		PATRICIA D...	NIST ATP	1,065.00		17,099.00
General Journal	10/31/2001	DBK 1023		KRACKOW	NIST ATP	577.00		17,676.00
General Journal	11/8/2001	DBK 1029		KRACKOW	NIST ATP	1,590.00		19,266.00
General Journal	12/11/2001	DBK 1038		KRACKOW	NIST ATP	560.00		19,826.00
General Journal	4/1/2002	DBK 1069		ORAL PATH...	NIST ATP	118.00		19,944.00
General Journal	1/10/2002	DBK 5191		DR CHRISTI...	NIST ATP	350.00		20,294.00
General Journal	1/18/2002	DBK 5194		R E WHITE ...	NIST ATP	600.00		20,894.00
General Journal	3/4/2002	DBK 5202		JOEL MITTL...	NIST ATP	35.00		20,929.00
General Journal	3/15/2002	DBK 5205		DR TODD B...	NIST ATP	360.00		21,289.00
General Journal	3/29/2002	DBK 5206		PATRICIA D...	NIST ATP	20.00		21,309.00
General Journal	6/7/2002	DBK 5225		R E WHITE ...	NIST ATP	600.00		21,909.00
General Journal	6/17/2002	DBK 5228		JOEL MITTL...	NIST ATP	35.00		21,944.00
Check	2/7/2002	10063	E. Gurfein (vendor)	6066	NIST ATP	2,469.60		24,413.60
Check	9/30/2002	10485	Todd J Berman M.D.	6066	NIST ATP	375.00		24,788.60
Check	9/30/2002	10506	E. Gurfein (vendor)	6066	NIST ATP	357.00		25,145.60
General Journal	5/31/2002	DBK 053102		DR CHRISTI...	NIST ATP	2,550.00		27,695.60
General Journal	5/31/2002	DBK 053102		KRACKOW	NIST ATP	5,170.00		32,865.60
General Journal	5/31/2002	OOP 53102		OOP DENTIST	NIST ATP	10.00		32,875.60
General Journal	8/31/2002	DBK 083102		DR CHRISTI...	NIST ATP	1,500.00		34,375.60
General Journal	8/24/2002	DBK 083102		KRACKOW	NIST ATP	1,580.00		35,955.60
Total 6066 · Medical Reimbursed						35,955.60	0.00	35,955.60
6067 · Oxford Health								
Check	1/5/2002	NCD 101	Oxford Health Plans	6067	NIST ATP	1,442.34		1,442.34
Check	2/1/2002	NCD 204	Oxford Health Plans	6067	NIST ATP	480.78		1,923.12
Check	3/1/2002	NCD 302	Oxford Health Plans	6067	NIST ATP	1,037.47		2,960.59
Check	4/2/2002	NCD 404	Oxford Health Plans	6067	NIST ATP	1,037.47		3,998.06
Check	5/1/2002	NCD 504	Oxford Health Plans	6067	NIST ATP	1,543.55		5,541.61
Check	7/12/2002	NCD 703	Oxford Health Plans	6067	NIST ATP	1,290.51		6,832.12
Check	8/18/2002	NCD 802	Oxford Health Plans	6067	NIST ATP	1,771.29		8,603.41
Check	9/19/2002	NCD 903	Oxford Health Plans	6067	NIST ATP	101.22		8,704.63
Check	9/30/2002	NCD 1003	Oxford Health Plans	6067	NIST ATP	1,214.60		9,919.23
Check	5/28/2002	NCD 5302	Oxford Health Plans	6067	NIST ATP	1,290.51		11,209.74

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MC
32754⁰⁰

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EB

KA-1801

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Accrual Basis

CASI ENTITIES
Transaction Detail By Account
October 2001 through September 2002

KA-1801

Type	Date	Num	Name	Memo	Class	Debit	Credit	Balance
Total 6067	Oxford Health					11,209.74	0.00	11,209.74
Total 6060	Employee Benefits					57,373.57	0.00	57,373.57
TOTAL						57,373.57	0.00	57,373.57

Drugs 1,630⁰⁹ 46
Gym Membership 1,143
Reimbursed Medical 32,754⁰⁰
35,527⁵⁵

1630⁰⁹
1143

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CASI ENTITIES
Transaction Detail By Account
October 2001 through September 2002

Type	Date	Num	Name	Memo	Class	Debit	Credit	Balance
6350 - Payroll Taxes								
6351 - FICA								
General Journal	10/31/2001	PR 103101		fica	NIST ATP	572.01		572.01
General Journal	11/30/2001	PR 11/30/...		fica	NIST ATP	234.73		806.74
General Journal	12/31/2001	pr 123101		03	NIST ATP	73.93		880.67
General Journal	1/3/2002	pr 010302		04	NIST ATP	516.67		1,397.34
General Journal	1/3/2002	pr 010302		04	NIST ATP	392.66		1,790.00
General Journal	1/25/2002	pr 012502		05	NIST ATP	128.34		1,918.34
General Journal	1/25/2002	pr 012502		06	NIST ATP	218.24		2,136.58
General Journal	1/31/2002	pr 013102		07	NIST ATP	516.67		2,653.25
General Journal	2/1/2002	pr 020102		08	NIST ATP	516.67		3,169.92
General Journal	3/1/2002	pr 030102		09	NIST ATP	103.70		3,273.62
General Journal	4/1/2002	pr 040102		10	NIST ATP	101.37		3,374.99
General Journal	5/1/2002	pr 050102		11	NIST ATP	83.70		3,458.69
General Journal	5/11/2002	pr 051102		12	NIST ATP	516.67		3,975.36
General Journal	5/31/2002	sccr			NIST ATP	2,066.66		6,042.02
General Journal	6/3/2002	PR 060302	Charles Da Salla	14	NIST ATP	92.07		6,134.09
General Journal	6/30/2002	PR 063002		15	NIST ATP	398.04		6,532.13
General Journal	7/5/2002	PR 070502	DB Karron	16	NIST ATP	7,502.52		14,034.65
General Journal	7/31/2002	PR 073102	Elisha Gurfein	17	NIST ATP	516.66		14,551.31
General Journal	8/2/2002	PR 080202		18	NIST ATP	2,910.54		17,461.85
General Journal	8/18/2002	pr 081802		19	NIST ATP	163.68		17,625.53
General Journal	9/6/2002	pr 090602		20	NIST ATP	261.09		17,886.62
General Journal	9/13/2002	pr 091302		21	NIST ATP	568.28		18,454.90
General Journal	9/20/2002	pr 092002		22	NIST ATP	38.59		18,493.49
General Journal	9/20/2002	pr 092002		22	NIST ATP	9.03		18,502.52
General Journal	9/30/2002	pr 093002		23	NIST ATP	985.76		19,488.28
Total 6351 - FICA						19,488.28	0.00	19,488.28
6352 - Medicare								
General Journal	10/31/2001	PR 103101		medicare	NIST ATP	133.77		133.77
General Journal	11/30/2001	PR 11/30/...		medicare	NIST ATP	94.90		188.67
General Journal	12/31/2001	pr 123101		03	NIST ATP	17.30		205.97
General Journal	1/3/2002	pr 010302		04	NIST ATP	120.83		326.80
General Journal	1/3/2002	pr 010302		04	NIST ATP	91.84		418.64
General Journal	1/25/2002	pr 012502		05	NIST ATP	30.02		448.66
General Journal	1/25/2002	pr 012502		06	NIST ATP	51.04		499.70
General Journal	1/31/2002	pr 013102		07	NIST ATP	120.83		620.53
General Journal	2/1/2002	pr 020102		08	NIST ATP	120.83		741.36
General Journal	3/1/2002	pr 030102		09	NIST ATP	24.25		765.61
General Journal	4/1/2002	pr 040102		10	NIST ATP	23.70		789.31
General Journal	5/1/2002	pr 050102		11	NIST ATP	19.58		808.89
General Journal	5/11/2002	pr 051102		12	NIST ATP	120.83		929.72
General Journal	5/31/2002	sccr			NIST ATP	483.34		1,413.06
General Journal	6/3/2002	PR 060302	Charles Da Salla	14	NIST ATP	21.53		1,434.59
General Journal	6/30/2002	PR 063002		15	NIST ATP	93.10		1,527.69
General Journal	7/5/2002	PR 070502	DB Karron	16	NIST ATP	1,399.61		2,927.30
General Journal	7/31/2002	PR 073102	Elisha Gurfein	17	NIST ATP	120.84		3,048.14
General Journal	8/2/2002	PR 080202		18	NIST ATP	654.33		3,702.47

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CAS ENTITIES
KA-1803
Transaction Detail By Account
October 2001 through September 2002

Type	Date	Num	Name	Memo	Class	Debit	Credit	Balance
General Journal	8/18/2002	pr 081802		19	NIST ATP	38.28		3,740.75
General Journal	9/6/2002	pr 090602		20	NIST ATP	61.07		3,801.82
General Journal	9/13/2002	pr 091302		21	NIST ATP	132.90		3,934.72
General Journal	9/30/2002	pr 093002		23	NIST ATP	299.66		4,234.38
General Journal	9/30/2002	dbk pr		1.45 % 61918.	NIST ATP	897.81		5,132.19
General Journal	9/30/2002	dbk pr			NIST ATP	0.00		5,132.19
Total 6352 · Medicare						5,132.19	0.00	5,132.19
6353 · FUTA								
General Journal	12/30/2001	FUTA		INC 10,870 ...	NIST ATP	86.96		86.96
General Journal	3/30/2002	FUTA			NIST ATP	114.10		201.06
General Journal	6/29/2002	FUTA			NIST ATP	117.10		318.16
General Journal	8/30/2002	FUTA		INC 34,270 ...	NIST ATP	42.96		361.12
General Journal	9/29/2002	FUTA			NIST ATP	255.99		617.11
Total 6353 · FUTA						617.11	0.00	617.11
6354 · NYSUI								
General Journal	12/30/2001	NYSUI			NIST ATP	150.93		150.93
General Journal	12/30/2001	NYSUI			NIST ATP	2.90		153.83
General Journal	3/30/2002	NYSUI			NIST ATP	290.50		444.33
General Journal	3/30/2002	NYSUI			NIST ATP	5.45		449.78
General Journal	6/29/2002	NYSUI			NIST ATP	705.50		1,155.28
General Journal	6/29/2002	NYSUI			NIST ATP	13.23		1,168.51
General Journal	8/30/2002	NYSUI			NIST ATP	214.80		1,383.31
General Journal	8/30/2002	NYSUI			NIST ATP	4.03		1,387.34
General Journal	9/29/2002	NYSUI			NIST ATP	544.70		1,932.04
General Journal	9/29/2002	NYSUI			NIST ATP	10.21		1,942.25
Total 6354 · NYSUI						1,942.25	0.00	1,942.25
6356 · NJ Disability								
Check	4/30/2002	10158	New Jersey Divisio...	6356 6357	NIST ATP	117.50		117.50
Check	7/29/2002	10346	State of New Jersey	6356 6357	NIST ATP	103.34		220.84
Check	7/29/2002	10347	State of New Jersey	6356 6357	NIST ATP	183.86		404.70
Total 6356 · NJ Disability						404.70	0.00	404.70
6357 · NJ UI								
Check	4/30/2002	10158	New Jersey Divisio...	6356 6357	NIST ATP	99.88		99.88
Check	7/29/2002	10346	State of New Jersey	6356 6357	NIST ATP	333.28		433.16
Check	7/29/2002	10347	State of New Jersey	6356 6357	NIST ATP	591.64		1,024.80
Total 6357 · NJ UI						1,024.80	0.00	1,024.80
6359 · Penalties and Late Fees								
Check	9/30/2002	10418	State of New Jersey	6359	NIST ATP	29.01		29.01
Total 6359 · Penalties and Late Fees						29.01	0.00	29.01
Total 6350 · Payroll Taxes						28,638.34	0.00	28,638.34
TOTAL						28,638.34	0.00	28,638.34

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CASI ENTITIES
KA-1804
Profit & Loss by Class
October 2001 through September 2002

	N LLC N	NIST ATP	NN CO FUNDING	TOTAL
Ordinary Income/Expense				
Income				
4000 · Income				
4010 · Reimbursed Expense Income	0.00	207.51	0.00	207.51
4013 · Co-Funding via Out of Pocket	94.10	0.00	1,371.72	1,465.82
4014 · Co-Funding via Mastercard	0.00	0.00	25,735.95	25,735.95
4015 · In-Kind Equipment Contribution	0.00	0.00	30,000.00	30,000.00
4020 · NIST ATP Income	0.00	800,000.00	0.00	800,000.00
4712 · FROM DBKTO NIST A/C 1010	0.00	3,000.00	0.00	3,000.00
4912 · DBK For NIST ATP	0.00	0.00	17,795.00	17,795.00
Total 4000 · Income	94.10	803,207.51	74,902.67	878,204.28
Total Income	94.10	803,207.51	74,902.67	878,204.28
Expense				
5000 · AE-Accounting				
5001 · AE-Jill Feldman CPA	0.00	1,000.00	0.00	1,000.00
Total 5000 · AE-Accounting	0.00	1,000.00	0.00	1,000.00
5002 · AE-Airfare				
5004 · AE-American West	0.00	316.00	0.00	316.00
5005 · AE-Expedia	0.00	956.50	0.00	956.50
5006 · AE-Jetblue	0.00	280.00	0.00	280.00
Total 5002 · AE-Airfare	0.00	1,552.50	0.00	1,552.50
5007 · AE-Auto				
5009 · AE-Central Parking	0.00	25.00	0.00	25.00
5010 · AE-Edison Parking	0.00	68.00	0.00	68.00
5011 · AE-Gas	0.00	182.49	0.00	182.49
Total 5007 · AE-Auto	0.00	275.49	0.00	275.49
5123 · AE-Books				
5125 · AE-Barnes & Noble	0.00	18.40	0.00	18.40
5126 · AE-Borders Books	0.00	48.66	0.00	48.66
5128 · AE-IEEE Books	0.00	193.48	0.00	193.48
Total 5123 · AE-Books	0.00	260.54	0.00	260.54
5138 · AE-Dues and Subscriptions	0.00	1,026.48	0.00	1,026.48
5139 · AE-Finance Charge	0.00	4.37	0.00	4.37
5140 · AE-Hardware				
5141 · AE-3D.FX Cool	0.00	86.30	0.00	86.30
5143 · AE-ADOBE.Com	0.00	767.39	0.00	767.39
5145 · AE-BkBox	0.00	1,014.43	0.00	1,014.43
5157 · AE-Datavision	0.00	4,316.84	0.00	4,316.84
5158 · AE-Digital River	0.00	180.82	0.00	180.82
5161 · AE-Electrical Supply	0.00	571.70	0.00	571.70
5165 · AE-GL Video	0.00	335.00	0.00	335.00

NIST only 1 of 7 HABAC 540

CASI ENTITIES
KA-1805
Profit & Loss by Class
October 2001 through September 2002

	N LLC N	NIST ATP	NN CO FUNDING	TOTAL
5168 · AE-IBM Direct	0.00	1,111.73	0.00	1,111.73
5169 · AE-J&R Sound	0.00	243.53	0.00	243.53
5171 · AE-Lumberland	0.00	9.90	0.00	9.90
5173 · AE-Projector People	0.00	199.00	0.00	199.00
5174 · AE-Rackit Technology	0.00	1,366.00	0.00	1,366.00
5176 · AE-Sub Zero Technology	0.00	89.35	0.00	89.35
5178 · AE-Wacom Technology	0.00	171.29	0.00	171.29
5180 · AE-Winzip	0.00	29.00	0.00	29.00
5140 · AE-Hardware - Other	0.00	310.57	0.00	310.57
Total 5140 · AE-Hardware	0.00	10,802.85	0.00	10,802.85
5189 · AE-Hotel	0.00	2,282.80	0.00	2,282.80
5190 · AE-Installation				
5192 · AE-Homefront Hardware	0.00	2,672.03	0.00	2,672.03
5193 · AE-Jensen Tools	0.00	1,161.01	0.00	1,161.01
5190 · AE-Installation - Other	0.00	111.87	0.00	111.87
Total 5190 · AE-Installation	0.00	3,944.91	0.00	3,944.91
5200 · AE-Internet				
5203 · AE-Expedia	0.00	331.25	0.00	331.25
5200 · AE-Internet - Other	0.00	0.00	0.00	0.00
Total 5200 · AE-Internet	0.00	331.25	0.00	331.25
5210 · AE-Meals	0.00	1,433.23	0.00	1,433.23
5220 · AE-Office				
5222 · AE-Coffee Distributing	0.00	407.93	0.00	407.93
5226 · AE-Office Depot	0.00	2,939.06	0.00	2,939.06
5227 · AE-Office Max	0.00	28.20	0.00	28.20
5229 · AE-Radio Shack	0.00	185.60	0.00	185.60
5231 · AE-Staples	0.00	1,029.35	0.00	1,029.35
5220 · AE-Office - Other	0.00	201.25	0.00	201.25
Total 5220 · AE-Office	0.00	4,791.39	0.00	4,791.39
5260 · AE-Phone				
5265 · AE-Sprint	0.00	-310.00	0.00	-310.00
5266 · AE-Telephone	0.00	234.30	0.00	234.30
5260 · AE-Phone - Other	0.00	127.00	0.00	127.00
Total 5260 · AE-Phone	0.00	51.30	0.00	51.30
5270 · AE-Postage				
5275 · AE-USPS	0.00	279.43	0.00	279.43
Total 5270 · AE-Postage	0.00	279.43	0.00	279.43
5280 · AE-Repairs	0.00	46.16	0.00	46.16
5290 · AE-Seminar				
5292 · AE-SIAM Math Society	0.00	500.00	0.00	500.00

NIST only 2 of 4
HABAC 541

CASI ENTITIES
KA-1806
Profit & Loss by Class
October 2001 through September 2002

	N LLC N	NIST ATP	NN CO FUNDING	TOTAL
Total 5290 · AE-Seminar	0.00	500.00	0.00	500.00
5299 · AE-Software				
5300 · AE-Buy Up Time	0.00	799.49	0.00	799.49
5303 · AE-Eacceleration	0.00	36.00	0.00	36.00
5306 · AE-GetInfo.Com	0.00	15.63	0.00	15.63
5307 · AE-Iris Inc.	0.00	68.94	0.00	68.94
5308 · AE-Jasc Software	0.00	19.00	0.00	19.00
5310 · AE-McAfee	0.00	72.69	0.00	72.69
5312 · AE-Quickbooks	0.00	1,227.90	0.00	1,227.90
5314 · AE-Regsoft	0.00	97.89	0.00	97.89
5316 · AE-Roxio	0.00	105.90	0.00	105.90
5317 · AE-Runtime	0.00	159.00	0.00	159.00
5319 · AE-Tehalchemy	0.00	34.95	0.00	34.95
5320 · AE-Visioneer	0.00	44.94	0.00	44.94
5321 · AE-WNT.Reg.Net	0.00	57.90	0.00	57.90
5299 · AE-Software - Other	0.00	554.31	0.00	554.31
Total 5299 · AE-Software	0.00	3,294.54	0.00	3,294.54
5350 · AE-Tech				
5351 · AE-Time Motion Tools	0.00	104.55	0.00	104.55
5352 · Microsoft	0.00	245.00	0.00	245.00
Total 5350 · AE-Tech	0.00	349.55	0.00	349.55
5360 · AE-Tools				
5361 · AE-Micro Mark	0.00	139.95	0.00	139.95
5362 · AE-Tecra Tools	0.00	247.30	0.00	247.30
Total 5360 · AE-Tools	0.00	387.25	0.00	387.25
5369 · AE-Travel				
5371 · AE-Luggage Carts	0.00	4.00	0.00	4.00
5372 · AE-Metrocard	0.00	90.00	0.00	90.00
5373 · AE-Taxi and Limousine	0.00	50.00	0.00	50.00
5374 · AE-Train	0.00	1,589.00	0.00	1,589.00
Total 5369 · AE-Travel	0.00	1,733.00	0.00	1,733.00
6000 · Accounting				
6003 · Jill Feldman CPA	0.00	3,000.00	500.00	3,500.00
6004 · Joan Hayes CPA	0.00	2,090.00	0.00	2,090.00
6005 · Ken Jackson	0.00	3,280.00	0.00	3,280.00
Total 6000 · Accounting	0.00	8,370.00	500.00	8,870.00
6010 · Auto				
6011 · Auto Rental	0.00	1,552.65	0.00	1,552.65
6012 · Exxon	0.00	49.30	0.00	49.30
6013 · Gas	0.00	56.64	0.00	56.64
6015 · Parking	2.00	993.50	0.00	995.50

NIST only 3 of 7 HABAC 542

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GAS ENTITIES
KA-1807
Profit & Loss by Class
October 2001 through September 2002

	N LLC N	NIST ATP	NN CO FUNDING	TOTAL
6016 · Sunoco	0.00	43.40	0.00	43.40
6017 · Tolls	0.00	507.15	0.00	507.15
Total 6010 · Auto	2.00	3,202.64	0.00	3,204.64
6019 · Books	0.00	464.80	0.00	464.80
6020 · Communications				
6021 · ATT	0.00	122.33	0.00	122.33
6022 · Cable	0.00	798.06	0.00	798.06
6025 · MCI	0.00	410.75	0.00	410.75
6026 · RCN	0.00	524.01	0.00	524.01
6027 · Reimbursed Telephone	0.00	344.00	0.00	344.00
6028 · Skytel	0.00	486.60	0.00	486.60
6030 · Thorn	0.00	854.55	0.00	854.55
6032 · Verizon	0.00	836.12	0.00	836.12
6034 · Voicestream Wireless	0.00	229.43	0.00	229.43
6035 · Vz Wireless	0.00	272.93	0.00	272.93
6036 · Webworqs	0.00	4,000.00	0.00	4,000.00
Total 6020 · Communications	0.00	8,878.78	0.00	8,878.78
6040 · Computer Installation				
6041 · Columbia	0.00	589.96	0.00	589.96
6043 · Figlia & Sons	0.00	1,995.00	0.00	1,995.00
6044 · Homefront Hardware	0.00	29.00	0.00	29.00
6045 · Kips Bay Hardware	0.00	70.27	0.00	70.27
6046 · Metro Solar	0.00	1,000.00	0.00	1,000.00
Total 6040 · Computer Installation	0.00	3,684.23	0.00	3,684.23
6050 · Conference	0.00	600.00	0.00	600.00
6053 · Dues and Subscriptions	0.00	141.06	0.00	141.06
6060 · Employee Benefits				
6061 · Arista	0.00	3,104.35	0.00	3,104.35
6062 · Childcare Services - Rosalie Me	0.00	1,835.00	0.00	1,835.00
6063 · Drugs	0.00	3,236.88	0.00	3,236.88
6064 · Gym Membership	0.00	1,143.46	0.00	1,143.46
6065 · Horizon	0.00	888.54	0.00	888.54
6066 · Medical Reimbursed	0.00	19,245.60	17,295.00	36,540.60
6067 · Oxford Health	0.00	11,209.74	0.00	11,209.74
Total 6060 · Employee Benefits	0.00	40,663.57	17,295.00	57,958.57
6090 · Equipment Repairs	0.00	107.17	0.00	107.17
6092 · Honorarium	0.00	569.80	0.00	569.80
6093 · Insurance	0.00	925.37	0.00	925.37
6100 · Legal				
6102 · Frederica Miller ESQ	0.00	6,000.00	0.00	6,000.00
Total 6100 · Legal	0.00	6,000.00	0.00	6,000.00
6120 · Miscellaneous	0.00	147.01	0.00	147.01

Auto

NIST Only 4 of 7 HABAC 543

CASI ENTITIES
KA-1808
Profit & Loss by Class
October 2001 through September 2002

	N LLC N	NIST ATP	NN CO FUNDING	TOTAL
6122 · NG Check	0.00	0.00	0.00	0.00
6130 · Office	0.00	433.27	0.00	433.27
6150 · Outside Service				
6151 · Abe Karron	0.00	1,000.00	0.00	1,000.00
6152 · Advanced Technology Group	0.00	1,000.00	0.00	1,000.00
6155 · D. Ferrand	0.00	1,300.00	0.00	1,300.00
6157 · George Wolberg PhD	0.00	38,898.99	0.00	38,898.99
6158 · James Cox o/s	0.00	33,930.00	0.00	33,930.00
6161 · Radio Logic	0.00	100.00	0.00	100.00
6162 · Scott Albin	0.00	2,000.00	0.00	2,000.00
Total 6150 · Outside Service	0.00	78,228.99	0.00	78,228.99
6170 · Paypal Payments	0.00	329.75	0.00	329.75
6175 · Postage & Delivery	0.00	641.10	0.00	641.10
6178 · Repairs				
6180 · General	0.00	173.10	0.00	173.10
6178 · Repairs - Other	0.00	75.00	0.00	75.00
Total 6178 · Repairs	0.00	248.10	0.00	248.10
6189 · Rent				
6192 · Rent for 2002	0.00	2,000.00	0.00	2,000.00
Total 6189 · Rent	0.00	2,000.00	0.00	2,000.00
6300 · Payroll Expenses				
6301 · Scott Albin emp	0.00	4,950.00	0.00	4,950.00
6304 · James L. Cox emp	0.00	5,200.00	0.00	5,200.00
6305 · Elisha Gurfeln	0.00	100,000.95	0.00	100,000.95
6306 · D.B. Karron	0.00	184,252.72	0.00	184,252.72
6307 · Charles La Salla	0.00	19,800.00	0.00	19,800.00
6308 · Regner M. Peralta	0.00	1,312.50	0.00	1,312.50
6310 · Matthew Rothman	0.00	3,405.00	0.00	3,405.00
6311 · Robert G. Wine	0.00	3,520.00	0.00	3,520.00
6314 · Nicholee A. Wynter	0.00	9,348.75	0.00	9,348.75
Total 6300 · Payroll Expenses	0.00	331,789.92	0.00	331,789.92
6330 · Research and Development				
6331 · American Advanced Power	0.00	215.00	0.00	215.00
6332 · American Media Systems	0.00	1,180.09	0.00	1,180.09
6334 · E MAG	0.00	2,850.00	0.00	2,850.00
6335 · frozencpu.com	0.00	845.83	0.00	845.83
6337 · General Computer	0.00	97,997.14	0.00	97,997.14
6338 · Pacific Data Storage	0.00	1,429.00	0.00	1,429.00
6339 · Ricoh	0.00	8,019.57	0.00	8,019.57
6341 · SGI Developers	0.00	295.00	0.00	295.00
6342 · Silicon City	0.00	93,064.55	0.00	93,064.55
6343 · Silicon Graphics	0.00	45,265.35	0.00	45,265.35
6344 · Vision Shape	0.00	6,643.25	0.00	6,643.25

NIST only 5 of 7 NABAC 544

CASI ENTITIES
KA-1809
Profit & Loss by Class
October 2001 through September 2002

	N LLC N	NIST ATP	NN CO FUNDING	TOTAL
6345 · YC Cable	0.00	210.00	0.00	210.00
6346 · In Kind Computer Equipment	0.00	0.00	30,000.00	30,000.00
6330 · Research and Development - Other	0.00	2,128.51	0.00	2,128.51
Total 6330 · Research and Development	0.00	260,143.29	30,000.00	290,143.29
6349 · Stationery	0.00	195.77	0.00	195.77
6350 · Payroll Taxes				
6351 · FICA	0.00	19,488.28	0.00	19,488.28
6352 · Medicare	0.00	5,132.19	0.00	5,132.19
6353 · FUTA	0.00	617.11	0.00	617.11
6354 · NYSUI	0.00	1,942.25	0.00	1,942.25
6356 · NJ Disability	0.00	404.70	0.00	404.70
6357 · NJ UI	0.00	1,024.80	0.00	1,024.80
6359 · Penalties and Late Fees	0.00	29.01	0.00	29.01
Total 6350 · Payroll Taxes	0.00	28,638.34	0.00	28,638.34
6370 · Travel				
6371 · Airfare	0.00	100.00	0.00	100.00
6372 · Hotel	0.00	160.21	0.00	160.21
6373 · Meals	29.60	2,923.31	0.00	2,952.91
6374 · Misc Travel	0.00	224.93	0.00	224.93
6375 · Taxi	62.50	627.25	0.00	689.75
6376 · Train	0.00	14.75	0.00	14.75
6377 · Transit Check	0.00	599.60	0.00	599.60
6370 · Travel - Other	0.00	431.40	0.00	431.40
Total 6370 · Travel	92.10	5,081.45	0.00	5,173.55
6379 · Tuition Reimbursement	0.00	1,330.35	0.00	1,330.35
6380 · Utilities	0.00	1,568.00	0.00	1,568.00
Total Expense	94.10	818,729.80	47,795.00	866,618.90
Net Ordinary Income	0.00	-15,522.29	27,107.67	11,585.38
Other Income/Expense				
Other Expense				
6500 · Payroll Clearing Account				
6504 · Debits Net Payroll Clearing Acc	0.00	128,118.29	0.00	128,118.29
6516 · Credits Net Payroll Clearing Ac	0.00	-137,377.91	0.00	-137,377.91
Total 6500 · Payroll Clearing Account	0.00	-9,259.62	0.00	-9,259.62
7000 · Bank Transfer				
7001 · CASI Co-funding Rec'd by NIST	0.00	-20,600.00	0.00	-20,600.00
7006 · From 8735 TO INC OUT	0.00	94,376.00	0.00	94,376.00
7009 · FROM INC TO 8735 IN	0.00	-60,000.00	0.00	-60,000.00
Total 7000 · Bank Transfer	0.00	13,776.00	0.00	13,776.00

Travel

EXPENSE

NIST ONLY 60K 7 HA BAC545

CASI ENTITIES
KA-1810
Profit & Loss by Class
October 2001 through September 2002

	N LLC N	NIST ATP	NN CO FUNDING	TOTAL
Total Other Expense	0.00	4,516.38	0.00	4,516.38
Net Other Income	0.00	-4,516.38	0.00	-4,516.38
Net Income	0.00	-20,038.67	27,107.67	7,069.00

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NIST only 7067 ^{HA} BAC 516 Page 7

CASI ENTITIES
KA-1811
Profit & Loss by Class
October 2001 through September 2002

	AJE	INC	RENT	TOTAL
Ordinary Income/Expense				
Expense				
5220 · AE-Office	0.00	165.25	0.00	165.25
6000 · Accounting				
6003 · Jill Feldman CPA	0.00	2,000.00	0.00	2,000.00
Total 6000 · Accounting	0.00	2,000.00	0.00	2,000.00
6010 · Auto				
6011 · Auto Rental	0.00	295.57	0.00	295.57
6014 · Mobil	0.00	63.91	0.00	63.91
6015 · Parking	0.00	100.00	0.00	100.00
Total 6010 · Auto	0.00	459.48	0.00	459.48
6018 · Bank Charges	0.00	45.54	0.00	45.54
6020 · Communications				
6021 · ATT	0.00	139.61	0.00	139.61
6022 · Cable	0.00	87.60	0.00	87.60
6025 · MCI	0.00	135.99	0.00	135.99
6028 · Skytel	0.00	369.32	0.00	369.32
6030 · Thorn	0.00	522.22	0.00	522.22
6032 · Verizon	0.00	1,299.23	0.00	1,299.23
Total 6020 · Communications	0.00	2,553.97	0.00	2,553.97
6050 · Conference	0.00	970.00	0.00	970.00
6051 · Depreciation	0.00	10,489.00	0.00	10,489.00
6052 · Domain Name	0.00	70.00	0.00	70.00
6053 · Dues and Subscriptions	0.00	50.00	0.00	50.00
6060 · Employee Benefits				
6063 · Drugs	0.00	477.92	0.00	477.92
6066 · Medical Reimbursed	0.00	774.00	0.00	774.00
6067 · Oxford Health	0.00	1,996.96	0.00	1,996.96
Total 6060 · Employee Benefits	0.00	3,248.88	0.00	3,248.88
6090 · Equipment Repairs	0.00	317.17	0.00	317.17
6091 · Finance Charge	0.00	8.75	0.00	8.75
6092 · Honorarium	0.00	472.25	0.00	472.25
6100 · Legal				
6102 · Frederica Miller ESQ	10,000.00	0.00	0.00	10,000.00
6106 · Pennie & Edmonds	0.00	9,404.13	0.00	9,404.13
6109 · Solomon & Bernstein	10,000.00	1,800.00	0.00	11,800.00
Total 6100 · Legal	20,000.00	11,204.13	0.00	31,204.13
6120 · Miscellaneous	0.00	20.28	0.00	20.28
6150 · Outside Service				
6152 · Advanced Technology Group	0.00	68,000.00	0.00	68,000.00
6155 · D. Ferrand	0.00	3,319.00	0.00	3,319.00

Not NIST 1 of 3 HABAC 547

CASI ENTITIES
KA-1812
Profit & Loss by Class
October 2001 through September 2002

	AJE	INC	RENT	TOTAL
Total 6150 · Outside Service	0.00	71,319.00	0.00	71,319.00
6175 · Postage & Delivery	0.00	189.35	0.00	189.35
6189 · Rent				
6191 · Rent for 2001	0.00	0.00	33,000.00	33,000.00
6192 · Rent for 2002	0.00	0.00	16,000.00	16,000.00
Total 6189 · Rent	0.00	0.00	49,000.00	49,000.00
6330 · Research and Development				
6342 · Silicon City	0.00	1,000.00	0.00	1,000.00
Total 6330 · Research and Development	0.00	1,000.00	0.00	1,000.00
6349 · Stationery	0.00	320.47	0.00	320.47
6350 · Payroll Taxes				
6351 · FICA	-1,229.23	0.00	0.00	-1,229.23
6352 · Medicare	-330.24	0.00	0.00	-330.24
Total 6350 · Payroll Taxes	-1,559.47	0.00	0.00	-1,559.47
6360 · Taxes				
6361 · NY Corporation Tax	0.00	800.00	0.00	800.00
Total 6360 · Taxes	0.00	800.00	0.00	800.00
6370 · Travel				
6375 · Taxi	0.00	100.00	0.00	100.00
Total 6370 · Travel	0.00	100.00	0.00	100.00
6380 · Utilities	0.00	7,639.04	0.00	7,639.04
Total Expense	18,440.53	113,442.56	49,000.00	180,883.09
Net Ordinary Income	-18,440.53	-113,442.56	-49,000.00	-180,883.09
Other Income/Expense				
Other Expense				
6500 · Payroll Clearing Account				
6504 · Debits Net Payroll Clearing Acc	0.00	9,259.62	0.00	9,259.62
Total 6500 · Payroll Clearing Account	0.00	9,259.62	0.00	9,259.62
7000 · Bank Transfer				
7002 · CASI Co-Funding to NIST ATP	0.00	20,600.00	0.00	20,600.00
7005 · From 8735 to INC IN	0.00	-94,376.00	0.00	-94,376.00
7010 · FROM INC TO 8735 OUT	0.00	60,000.00	0.00	60,000.00
Total 7000 · Bank Transfer	0.00	-13,776.00	0.00	-13,776.00
Total Other Expense	0.00	-4,516.38	0.00	-4,516.38
Net Other Income	0.00	4,516.38	0.00	4,516.38

Not NIST 2 of 3 INBAC 548 Page 2

CASI ENTITIES
KA-1813
Profit & Loss by Class
October 2001 through September 2002

	AJE	INC	RENT	TOTAL
Net Income	-18,440.53	-108,926.18	-49,000.00	-176,366.71

Not Nist 3 of 3. HA BAC 549 Page 3

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

KA-1814

KA-1814
FILING RECEIPT

KA-1814

ENTITY NAME: CASI LLC

DOCUMENT TYPE: MERGER (DOM LLC)
PROCESS

COUNTY: NEWY

SERVICE COMPANY: DELANEY CORPORATE SERVICES LTD.

SERVICE CODE: 30

CONSTITUENT NAME: COMPUTER AIDED SURGERY, INCORPORATED

FILED:08/30/2002 DURATION:***** CASH#:020830000664 FILM #:020830000640

ADDRESS FOR PROCESS

EFFECT DATE

THE LLC
C/O SOLOMON & BERNSTEIN
NEW YORK, NY 10001-5404

1178 BROADWAY 5TH FL

08/30/2002

REGISTERED AGENT



FILER	FEES		PAYMENTS	
-----	-----	95.00	-----	95.00
JOEL BERNSTEIN ESQ	FILING	60.00	CASH	0.00
C/O SOLOMON & BERNSTEIN	TAX	0.00	CHECK	0.00
1178 BROADWAY 5TH FL	CERT	0.00	CHARGE	0.00
NEW YORK, NY 10001	COPIES	10.00	DRAWDOWN	95.00
	HANDLING	25.00	BILLED	0.00
			REFUND	0.00

DOS-1025 (11/89)

HA BAC 550

KA-1815

KA-1815

KA-1815

HA BAC SSI

State of New York }
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on

SEP 05 2002



A handwritten signature in black ink, appearing to be "R. A. S.", written over a horizontal line.

Secretary of State

DOS-200 (Rev. 03/02)

HA BAC SSI

KA-1816

KA-1816 020830000 640 KA-1816

HA: BAC 552

**CERTIFICATE OF MERGER
of**

Computer Aided Surgery, Incorporated

and

CASI LLC

into

CASI LLC

Under Section 1003 of the Limited Liability Company Law

FIRST: The name and jurisdiction of formation or organization of each domestic limited liability company or other domestic business entity that is to merge are:

- 1. Computer Aided Surgery, Incorporated New York State**
- 2. CASI LLC New York State**

SECOND: For each domestic limited liability company and domestic other business entity, the date when its initial Articles of Organization or formation document was filed with Department of State is:

- 1. Computer Aided Surgery, Inc
Certificate of Incorporation: December 12, 1995**
- 2. CASI LLC
Articles of Organization: July 31, 2002**

THIRD: The name of the surviving domestic limited liability company is: CASI LLC.

FOURTH: The agreement of merger has been approved and executed by each of the domestic limited liability companies or domestic other business entities that is a party thereto.

FIFTH: The future effective date of the merger, is to be upon the date of the filing of the Certificate of Merger.

SIXTH: The Secretary of State is designated as agent of the surviving limited liability company upon whom process against it may be served. The post office address within or without

HA BAC 552

KA-1817

KA-1817

KA-1817

this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is: CASI LLC c/o Solomon & Bernstein, 1178 Broadway, 5th floor, New York, New York 10001-5404.

SEVENTH: The agreement of merger is on file at the following place of business of the surviving domestic limited liability company: 300 East 33rd Street, Suite 4N, New York, New York 10016.

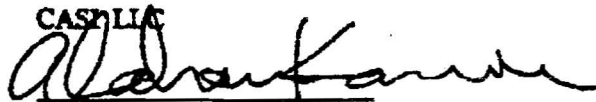
EIGHTH: A copy of the agreement of merger will be furnished by the surviving domestic limited liability company on request and without cost to any member of any domestic limited liability company or to any person holding an interest in any other business entity that is to merge pursuant to such agreement.

NINTH: There are no changes to the Articles of Organization necessary by reason of the merger.

Computer Aided Surgery, Inc


By Daniel B. Karron, President

CASI LLC


By Abraham Karron, Member

HA BACSS3

2

HA BACSS3

KA-1818

KA-1818

KA-1818

020830000 646

CERTIFICATE OF MERGER

of

Computer Aided Surgery, Incorporated

and

CASI LLC

into

CASI LLC

HA BAC 554

Under Section 1003 of the Limited Liability Company Law



**DRAWDOWN
DELANEY - 30**

Filed by: Joel Bernstein, Esq.
c/o Solomon & Bernstein
1178 Broadway, 5th floor
New York, New York 1001

lcc
STATE OF NEW YORK
DEPARTMENT OF STATE

AUG 30 2002
AUG 30 2002
FILED
TAX S
BY: BZ



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HA BAC 554

KA-1819

Stock Certificates

= 9/15/02

KA-1819

use
10-
HA-BAC-SSS

Abe Karon	1%	10,000
Marian Karon	1%	10,000
Gurkin	3%	30,000
Lee Goldberg	1%	10,000
Frederick Miller	1%	10,000
James Cox	1%	10,000
Joel Bernstein	1%	10,000
Mat Rothman	1%	10,000
DBK	90%	

~~\$ 100,000~~

HABAC SSS

KA-1820

KA-1820

KA-1820

Certificate No. 1 Number of units 90

Formed under the laws of the State of New York

CASI LLC

MEMBERSHIP CERTIFICATE

This Certificate certifies that

D. B. Karron (PhD)

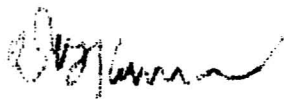
Is the owner of Ninety (90) fully paid units of the above LLC transferable only on the books of the LLC by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

The total number of units issued is 100.

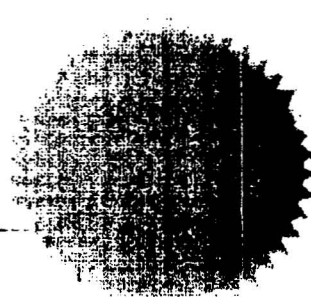
CASI LLC is the surviving entity after the merger of Computer Aided Surgery Incorporated (C)/B/A CASI with CASI LLC.

In Witness Whereof, the LLC has caused this certificate to be signed by its managing member.

Dated: November 19, 2002



Dr. D. B. Karron, Managing Member



HA BAC 556

HA BAC 556

KA-1821

KA-1821

KA-1821

Certificate No. 2 Number of units 4

Formed under the laws of the State of New York

CASI LLC

MEMBERSHIP CERTIFICATE

This Certificate certifies that

Mr. Abraham Karron

Is the owner of One (1) fully paid units of the above LLC transferable only on the books of the LLC by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

The total number of units issued is 100.

CASI LLC is the surviving entity after the merger of Computer Aided Surgery Incorporated D/B/A CASI with CASI LLC.

In Witness Whereof, the LLC has caused this certificate to be signed by its managing member.

Dated: November 19, 2002

Dr. D. B. Karron
Dr. D. B. Karron, Managing Member

HABAC 557

HABAC 557

KA-1822

KA-1822

KA-1822

Certificate No. 3 Number of units 2

Formed under the laws of the State of New York

CASI LLC

MEMBERSHIP CERTIFICATE

This Certificate certifies that

Mr. Joel Bernstein


Is the owner of One (1) fully paid units of the above LLC transferable only on the books of the LLC by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

The total number of units issued is 100.

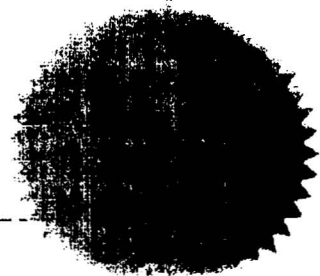
CASI LLC is the surviving entity after the merger of Computer Aided Surgery Incorporated D/B/A CASI with CASI LLC.

In Witness Whereof, the LLC has caused this certificate to be signed by its managing member.

Dated: November 19, 2002



Dr. D. B. Karron, Managing Member



HABAC 558

HABAC 558

KA-1823

KA-1823

KA-1823

Certificate No. 4 Number of units 2

Formed under the laws of the State of New York

CASI LLC

MEMBERSHIP CERTIFICATE

This Certificate certifies that

Ms. Fredica Miller

Is the owner of One (1) fully paid units of the above LLC transferable only on the books of the LLC by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

The total number of units issued is 100.

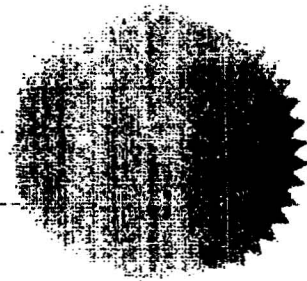
CASI LLC is the surviving entity after the merger of Computer Aided Surgery Incorporated D/B/A CASI with CASI LLC.

In Witness Whereof, the LLC has caused this certificate to be signed by its managing member.

Dated: November 19, 2002



Dr. D. B. Karron, Managing Member



HA BAC 559

HA BAC 559

KA-1824

KA-1824

KA-1824

Certificate No. 5 Number of units 3

Formed under the laws of the State of New York

CASI LLC

MEMBERSHIP CERTIFICATE

This Certificate certifies that

Mr. Elisha Gurfein

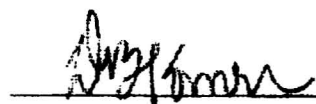
Is the owner of Three (3) fully paid units of the above LLC transferable only on the books of the LLC by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

The total number of units issued is 100.

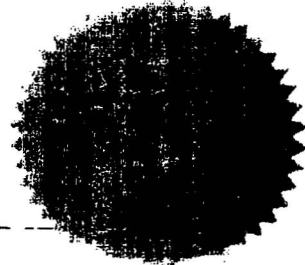
CASI LLC is the surviving entity after the merger of Computer Aided Surgery Incorporated D/B/A CASI with CASI LLC.

In Witness Whereof, the LLC has caused this certificate to be signed by its managing member.

Dated: November 19, 2002



Dr. D. B. Karron, Managing Member



HA-BAC 560

HA-BAC 560

KA-1825

KA-1825

KA-1825

Certificate No. 6 Number of units 1

Formed under the laws of the State of New York

CASI LLC

MEMBERSHIP CERTIFICATE

This Certificate certifies that

Mr. Lee Goldberg

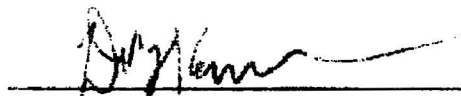
Is the owner of One (1) fully paid units of the above LLC transferable only on the books of the LLC by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

The total number of units issued is 100.

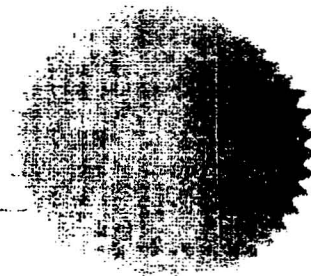
CASI LLC is the surviving entity after the merger of Computer Aided Surgery Incorporated D/B/A CASI with CASI LLC.

In Witness Whereof, the LLC has caused this certificate to be signed by its managing member.

Dated: November 19, 2002



Dr. D. B. Karron, Managing Member



HA BAC 561

HA BAC 561

KA-1826

KA-1826

KA-1826

Certificate No. 1 Number of units 1

Formed under the laws of the State of New York

CASI - LLC

MEMBERSHIP CERTIFICATE

This Certificate certifies that

Mrs. Marian Karron

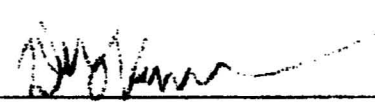
Is the owner of One (1) fully paid units of the above LLC transferable only on the books of the LLC by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

The total number of units issued is 100.

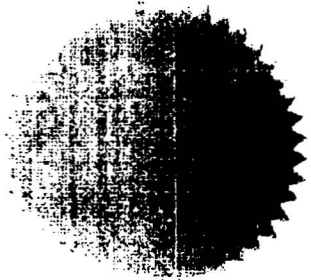
CASI LLC is the surviving entity after the merger of Computer Aided Surgery Incorporated D/B/A CASI with CASI LLC.

In Witness Whereof, the LLC has caused this certificate to be signed by its managing member.

Dated: November 19, 2002



Dr. D. B. Karron, Managing Member



HA BAC 562

HA BAC 562

KA-1827

KA-1827

KA-1827
HABAC 563

Certificate No. 8 Number of units 1

Formed under the laws of the State of New York

CASI LLC

MEMBERSHIP CERTIFICATE

This Certificate certifies that

Mr. Matthew Barton Rothman

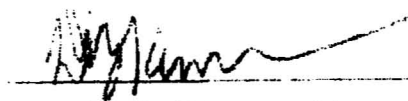
Is the PROVISIONAL owner of One (1) fully paid units of the above LLC transferable only on the books of the LLC by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

The total number of units issued is 100.

CASI LLC is the surviving entity after the merger of Computer Aided Surgery Incorporated D/B/A CASI with CASI LLC.

In Witness Whereof, the LLC has caused this certificate to be signed by its managing member.

Dated: November 19, 2002



Dr. D. B. Karron, Managing Member



HABAC 563

KA-1828

KA-1828

KA-1828

Certificate No. 9 Number of units 1

Formed under the laws of the State of New York

CASI LLC

MEMBERSHIP CERTIFICATE

This Certificate certifies that

Professor James Lee Cox

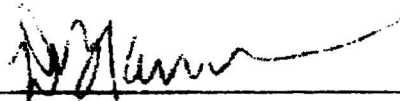
Is the provisional owner of One (1) fully paid units of the above LLC transferable only on the books of the LLC by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

The total number of units issued is 100.

CASI LLC is the surviving entity after the merger of Computer Aided Surgery Incorporated D/B/A CASI with CASI LLC.

In Witness Whereof, the LLC has caused this certificate to be signed by its managing member.

Dated: November 19, 2002



Dr. D. B. Karron, Managing Member

HA BAC 564

HA BAC 564

Trial TRANSCRIPT (Long)

Trial Transcript

1862ZKAR1

1UNITED STATES DISTRICT COURT

1SOUTHERN DISTRICT OF NEW YORK

2-----x

2

3UNITED STATES OF AMERICA,

3New York, N.Y.

3

4v.

4S2 07 CR 541 (RPP)

4

5DANIEL B. KARRON,

5

6Defendant.

6

7-----x

7

8

8June 2, 2008

99:30 a.m.

9

10Before:

10

11HON. ROBERT P. PATTERSON, JR.,

11

12District Judge

12

13

13

14APPEARANCES

14

15MICHAEL J. GARCIA

15United States Attorney for the

16Southern District of New York

16BY: STEVEN KWOK

17CHRISTIAN EVERDELL

17Assistant United States Attorneys

18

18RUBINSTEIN & COROZZO, LLP

19Attorneys for Defendant

19BY: RONALD RUBINSTEIN

20

20Also Present: Rachel Ondrik, U.S. Dept. of Commerce

21Kirk Yamatani, U.S. Dept. of Commerce

22

23

24

25

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862ZKAR1

1 THE DEPUTY CLERK: All rise.

2 THE COURT: Please be seated.

3 (Case called)

4 THE DEPUTY CLERK: Is the government ready in this
5 matter?

6 MR. KWOK: Yes, we are, your Honor. Steve Kwok for
7 the government. With me at counsel table is Christian
8 Everdell --

9 MR. EVERDELL: Good morning, your Honor.

10 MR. KWOK: -- our paralegal and the special agents.

11 THE COURT: Good morning.

12 THE DEPUTY CLERK: Defendant ready in this matter?

13 MR. RUBINSTEIN: Defendant is ready, good morning,
14 your Honor.

15 THE COURT: Good morning.

16 MR. RUBINSTEIN: Defendant is also represented by Ron
17 Rubinstein.

18 THE COURT: Good morning, Mr. Rubinstein, and Mr.
19 Karron.

20 What is the Government's projection of the length of
21 this trial?

22 MR. KWOK: The Government expects to conclude its case
23 within a week.

24 THE COURT: What about the defense?

25 MR. RUBINSTEIN: Your Honor, I would hope that the

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1 defense will take more than three days, but I don't think that
2 the government has factored in the potential cross-examination
3 of their witnesses in their one week.

4 THE COURT: I don't know how many witnesses you have,
5 Mr. Kwok.

6 MR. KWOK: Right now we have seven witnesses, your
7 Honor.

8 THE COURT: The nature of them?

9 MR. KWOK: We have two witnesses who will be
10 testifying about the program and the rules governing that
11 program. We have a government witness, an auditor, who will
12 demonstrate that the rules were broken and demonstrate how the
13 money was in fact spent. We have another witness, another
14 auditor accountant that the defendant hired to conduct a audit
15 of the company's books. And the remaining witnesses were all,
16 at one time or another, the defendant's company's employees who
17 would testify as to what happened and the considerations they
18 had with the defendant about these various things that are in
19 dispute.

20 THE COURT: I see. Those will be short witnesses, I
21 presume. And the --

22 MR. KWOK: I believe they would be short.

23 THE COURT: The accounting may be long.

24 MR. KWOK: Maybe slightly longer. But we have tried
25 our best, and we will continue to try to streamline the

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1 presentation of evidence.

2 THE COURT: Well, from the -- I was wondering after
3 Friday when I got notice of the expert witnesses, whether some
4 of the facts couldn't be stipulated. Mr. Rubinstein.

5 MR. RUBINSTEIN: I was thinking of that myself after I
6 received the Government's letter of May 13th. It seemed to me
7 that it may well be that we can stipulate, because it doesn't
8 sound like the issue as framed by the Government's response on
9 May 30th is, basically, we're not contesting that this can be
10 done. We're saying that because it wasn't agreed by the
11 program, NIST or ATP that, therefore, it's not allowable.

12 THE COURT: There are two prongs, as I understood it,
13 and I haven't read the 3500 material -- I see it's four
14 volumes, which is a little daunting.

15 But the two issues that I'm raising; one, they're
16 maintaining that there has to be a written benefit program,
17 and, as I understand it, they're unaware of any written benefit
18 program.

19 Now, secondly they're saying that the grant did not
20 provide for its funds to be expended in this way. Of course
21 that would involve their proving that grant funds were used as
22 opposed to CASI's funds, which raises the question about how I
23 charge this matter.

24 MR. RUBINSTEIN: Well, your Honor, our position is
25 that although the question isn't --

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1 THE COURT: Apparently there's no question that the
2 funds were expended in certain, in a certain fashion. Some of
3 the funds were. In other words, I gather that from the nature
4 of the defense, that the experts who testify, that you're
5 proffering, would testify that, I guess, but these funds were
6 expended in this way, but it's perfectly appropriate for them
7 to be expended in this way in view of the, the law pertaining
8 to cafeteria plans. That's sort of what I thought the defense
9 was.

10 MR. RUBINSTEIN: Yes, your Honor. The defense is very
11 simply that Dr. Karron had no intent to do anything -- to do
12 anything that rises to the level of criminal responsibility.
13 And that the fact that there wasn't a, quote, written plan in
14 place is not really relevant on the issue of intent. It goes
15 to the issue of intent, all right, and the question is that, as
16 the government seems to concede, that these kind of fringe
17 benefits under other circumstances might be bona fide if we
18 could work out a stipulation on that, then there's no need for
19 the expert witnesses. The question then comes whether or not
20 spending that money for these fringe benefits without a written
21 plan is a question for the jury, whether it rises to the level
22 of criminal activity.

23 So the reason I was going to call Mr. Sapin and Miss
24 LeClair, was to establish the bona fide of the expense itself
25 because there are people who may not think that certain medical

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1 expenses should be reimbursed by the employer, but in fact
2 these kind of medical expenses are reimbursed by employers in
3 certain fields, and my experts inform me Microsoft permits
4 these kind of expenses, and so that's the issue -- that's our
5 issue. If they're not --

6 THE COURT: That then raises a question -- there are
7 two questions involved. One, as I see it, one was whether or
8 not the -- it involves, in part, what funds were used; were
9 they grant funds or were they the corporate credit for these
10 expenses. If the corporation could afford these expenses with,
11 or borrowed for these expenses, then that's -- your defense is
12 that, okay, maybe there wasn't a written plan. But that goes
13 to his intent.

14 The second issue is whether or not grant funds were
15 used, and if the government can prove that grant funds were
16 used for these expenses, and that it violated the terms of the
17 grant, then the question of the defendant's intent with respect
18 to the grant funds is the issue, whether it was reasonable for
19 him under the circumstances to believe he could expend grant
20 from the monies for this purpose. That's a separate issue from
21 whether or not the defendant thought that companies often
22 covered people for extraordinary expenses of this sort under a
23 cafeteria under their plans and, therefore, what I'm doing is
24 perfectly all right as far as it goes as a company expenditure.

25 Now, maybe I'm -- maybe my analysis is wrong, but it

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1 seems to me that that's the way it breaks down; whether that
2 was a reasonable belief on his part that he could go ahead and
3 do it because he heard that other companies did that. That's a
4 separate issue from going to his intent and the issue of the
5 grant monies being reasonable, a reasonable belief that the
6 grant monies could be spent for the purpose. I don't know how
7 the proofs go, but those are the two issues that are being
8 raised and should be separately addressed.

9 Mr. Kwok would like to talk?

10 MR. KWOK: No, I think your Honor is exactly right.
11 We pointed out in our letter of May 30th, we don't really
12 concede anything. We just think that it's beside the point. I
13 don't know what cafeteria plans adopted by other companies say.
14 We simply take the position that it's irrelevant in this case,
15 because the government will prove that the medical expenses
16 were expended using grant funds. And what other companies
17 might have done in corporate America simply has no bearing on
18 the facts at issue in this case.

19 THE COURT: Well, that's what the -- if that's what
20 the Government's proof will be, and that's what the
21 Government's going to proceed in the case, then we go back to
22 the original arraignment, original indictment and whether we
23 have to -- this morning we've got to arraign the defendant on
24 the second -- the proposed superseding indictment.

25 But it seems to me the proposed superseding indictment

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1 means that the Court should only require that CASI funds were
2 used; whereas as I read the original indictment, and a more
3 restrictive reading was involved and there the government had
4 to prove that grant funds were used for improper purposes.

5 MR. KWOK: I see.

6 THE COURT: You see my distinction.

7 MR. KWOK: I see your distinction, your Honor, and
8 that's why we went to supersede the indictment because we want
9 to preserve the legal --

10 THE COURT: You want to have it both ways. But now --

11 MR. KWOK: And I think we are entitled to argue it
12 both ways to the jury. Not only is there no --

13 THE COURT: If you're going to argue it both ways to
14 the jury, then I think Mr. Rubinstein may be -- maybe, I'm not
15 sure, but may be entitled then to raise the issue of this
16 intent issue through these expert witnesses by proof, that
17 other companies in fact do this and that there are -- it's a
18 reasonable belief on his part that company funds could be spent
19 for this way.

20 MR. KWOK: I mean, your Honor, the government's
21 concern is that even whatever there may be any slight
22 evidentiary value to that type of testimony, we believe that
23 under Rule 403 it should not be admitted simply because the
24 risk of unfair prejudice to the government, and confusion of
25 the issues is so great. As Mr. Rubinstein just proffered now,

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1 that witness will be testifying mostly about, you know, issues
2 concerning transgender people, which we do not intend to focus
3 on at this trial. And our fear is that should those testimony,
4 which is on its face is irrelevant, come in, that is what this
5 trial may be involving to, and we simply have no interest in
6 prolonging this trial to talk about all these other things.

7 THE COURT: As long as the -- I've got to be -- you
8 said prejudice to the government, but I've got to think about
9 prejudice to the defense. If you're going to have the broader
10 case with two prongs, then I may feel that in fairness to the
11 defense, they have to be entitled to present their defense to
12 that second prong. And so that's the horns of the dilemma you
13 put the Court in.

14 (Pause)

15 MR. KWOK: Your Honor, just so we're clear about our
16 options that we are looking at, is your Honor still going to be
17 inclined to charge the jury about the absence of a tracing
18 requirement if we now tell you that we are not -- we're simply
19 going to argue that CASI funds are all federal funds, but,
20 nonetheless, when it comes time for the jury charge, would that
21 legal instruction still be included in the charge to the jury?

22 THE COURT: Just the CASI funds?

23 MR. KWOK: That something to the effect of, to satisfy
24 the element of proving \$5,000 or more of misspent money, the
25 government does not need to trace the amount that it's --

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1 THE COURT: I think you do have to prove the trace --
2 I don't think you have to trace the amount, but I think you
3 have to show that the expenditure was made by using those
4 funds.

5 MR. KWOK: Can I have a moment your Honor?

6 (Pause)

7 MR. KWOK: Your Honor, we don't want to give up on our
8 legal point. So if the defense is inclined because of the way
9 request to charge is worded now to bring in these experts, we
10 still stand on our objections, but we are understand your
11 Honor's position.

12 THE COURT: Then we better arraign the defendant on
13 the superseding indictment. Do we have a copy of it, Robert?
14 He stepped out. Maybe I have it, S2?

15 MR. RUBINSTEIN: I have a copy.

16 THE COURT: All right.

17 MR. RUBINSTEIN: Does the Court need one, your Honor?

18 THE COURT: I'll arraign the defendant at this time.
19 Is that convenient? I have a copy.

20 MR. RUBINSTEIN: Oh, fine.

21 THE COURT: Daniel B. Karron -- Mr. Rubinstein, have
22 you seen a copy of the superseding indictment charging the
23 defendant with stealing \$5,000 of property of CASI, while CASI
24 was a recipient of federal grant of more than \$10,000 in a
25 single year?

862ZKAR1

1 MR. RUBINSTEIN: Yes, your Honor.

2 THE COURT: And have you discussed the superseding
3 indictment with your client?

4 MR. RUBINSTEIN: I have, your Honor.

5 THE COURT: You wish to have the superseding
6 indictment read to the defendant?

7 MR. RUBINSTEIN: No, your Honor. We waive formal
8 reading of the superseding indictment S2, and defendant enters
9 a plea of not guilty, your Honor.

10 THE COURT: Mr. Karron, have you seen a copy of the
11 superseding indictment charging you with stealing \$5,000 or
12 more of property from CASI during the period that it was
13 receiving a \$10,000 grant or grant in excess of \$10,000 from
14 the federal government?

15 THE DEFENDANT: Yes, I have, your Honor.

16 THE COURT: And have you discussed the superseding
17 indictment with Mr. Rubinstein?

18 THE DEFENDANT: Yes, I have, your Honor.

19 THE COURT: Do you wish to have the superseding
20 indictment read to you at this time?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: And would you like a plea of not guilty
23 entered in your behalf at this time?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Plea of not guilty will be entered on

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1 behalf of the defendant, Daniel B. Karron. All right.

2 Now, the next thing I think I should bring up is that
3 with respect to the voir dire, I have -- I think I've included
4 in the voir dire all the questions the government requested,
5 and I have all the questions that the defense has requested,
6 except I've had a little trouble with the phraseology of one of
7 Mr. Rubinstein's requests, which was a request that, as
8 follows: Can you respect an individual's belief that he or she
9 was born the wrong gender?

10 I have trouble with respect as wording that question.
11 I rephrased it to say. Can you treat, without bias or
12 prejudice, any witness or defendant who states that he or she
13 believes he or she was born of the wrong gender.

14 MR. RUBINSTEIN: That's acceptable, your Honor.

15 THE COURT: All right.

16 MR. RUBINSTEIN: That's fine.

17 THE COURT: All right.

18 MR. RUBINSTEIN: I did have one additional --

19 THE COURT: It seemed to me respect was not really a
20 the proper question.

21 MR. RUBINSTEIN: I agree.

22 THE COURT: Whether there would be any bias or
23 prejudice --

24 MR. RUBINSTEIN: Yes.

25 THE COURT: -- with respect to a person of that sort.

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1 MR. RUBINSTEIN: I was wondering if we shouldn't, in
2 view of the fact there's apparently going to be voluminous
3 financial records or at least financial records submitted to
4 the jury in this case, whether or not you should inquire as to
5 the jurors if the case involves a lot of numbers or something,
6 is that going to present a problem.

7 THE COURT: Well, that's a good question. Are there
8 going to be significant financial records?

9 MR. KWOK: There are a lot of records, a lot of
10 financial records in the underlying case, but our witnesses
11 will testify to summary charts and records that they've
12 prepared in the course of analyzing those records. So our hope
13 is that when these witnesses testify, it will come across in a
14 very very simple straight forward manner about what they
15 exactly did.

16 THE COURT: What about the jury will have a question
17 of whether the summary charts, et cetera, accurately reflect
18 the underlying records.

19 MR. KWOK: I guess that could be a subject for Mr.
20 Rubinstein's cross-examination. But our position is that it is
21 very simple. It's essentially nothing more than data entry and
22 then adding up the numbers and creating some charts to see
23 where the money went. I don't believe that financial
24 sophistication of any kind is really necessary to be qualified
25 as a juror in this case.

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1 THE COURT: Well, that's why I asked the question
2 about stipulation, because it seemed to me that a stipulation
3 that the parties know what the records are, and if we could
4 get -- the issue is whether they were proper expenditures or
5 not.

6 MR. KWOK: I believe we --

7 THE COURT: But couldn't the parties enter into a
8 stipulation with respect to the fact that these expenditures
9 were made?

10 That would eliminate the financial, a lot of financial
11 records being put into before the jury, who could -- to
12 determine whether or not the summaries accurately reflect the
13 underlying records.

14 MR. KWOK: Your Honor, we have sent over a proposed
15 stipulation to --

16 THE COURT: Why don't you talk to Mr. Rubinstein now.
17 I don't want to get into that. I was just trying to see if --

18 MR. RUBINSTEIN: There's -- we have certain problems
19 with their version of financial records. That's why we
20 haven't -- there's one stipulation outstanding that we are
21 still trying to work out. Because, frankly, Judge, it's a very
22 unusual situation that the government does not have a general
23 ledger, and so --

24 THE COURT: Who has the general ledger, no one?

25 MR. RUBINSTEIN: We've created one recently off

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1 documents that we have, but -- in other words, they're going to
2 have witnesses testifying as to what they call summaries, but
3 the question is going to be, what is the basis for the summary
4 and where is -- where are the records that these summaries were
5 based upon, so that a -- and that, depending on those
6 witnesses' testimony, will determine what the defense --

7 THE COURT: I would've thought that those questions
8 could be lined up pretrial.

9 MR. RUBINSTEIN: We tried to, Judge, but we kept
10 asking for --

11 THE COURT: Because you have the situation where the
12 computers were -- records were. So I don't know how to
13 describe it, unusual.

14 MR. RUBINSTEIN: That's a kind way to describe it,
15 your Honor. 19 terabytes of information is kind of
16 extraordinary, but apparently these computers that accountants
17 have have their own programs that they insert and what have
18 you. But there are issues as to these records. So far we
19 haven't been able to resolve it. We're still working on it.

20 THE COURT: Well, is there any dispute that the
21 certain funds were expended for certain purposes? It seems to
22 me that that ought to be able to be, to be stipulated. If
23 there were these costs, they have to be paid for by somebody,
24 and there ought to be entries showing that those expenses were
25 made and that would put an end to it. It doesn't matter -- I

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1 don't understand why that can't be stipulated to and get
2 through this trial.

3 MR. KWOK: We would definitely welcome that
4 stipulation. I would direct --

5 THE COURT: If get into a mountain, that's possible,
6 of financial records, there is a possible jury determination
7 that they'll make the decision based on the mountain of
8 financial records and not based on any particular analysis of
9 it. So it seems to me that it's -- if monies were expended for
10 a certain purpose, that it to be clear that they were to both
11 parties that they were expended for those purposes.

12 MR. RUBINSTEIN: Judge, I know a lot of people think,
13 and I guess a lot of my colleagues on the defense side think
14 that confusion is good for the defense.

15 THE COURT: Okay.

16 MR. RUBINSTEIN: But I don't. I'm not -- I'm not an
17 advocate of that.

18 THE COURT: Well --

19 MR. RUBINSTEIN: All right. If the government gives
20 me --

21 THE COURT: I think it sometimes prejudices the
22 defense.

23 MR. RUBINSTEIN: Pardon?

24 THE COURT: I think it sometimes prejudices the
25 defense, but --

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1 MR. RUBINSTEIN: If the government gives me what
2 checks and what have you, that they're claiming were authored
3 and that are improper, and they square with my records of what
4 has been authored at this point, I assure you we will do
5 everything we can to work it out.

6 THE COURT: Okay.

7 MR. KWOK: I would --

8 THE COURT: How long is the trial going to take?

9 MR. RUBINSTEIN: Yes.

10 MR. KWOK: I think the government has already provided
11 these materials. I direct the defense's attention to
12 government exhibits 110 to 115. Those are, essentially, the
13 summaries and spread sheets and charts that we continued to
14 elicit from the witness. If the defense is willing to
15 stipulate to that, we welcome that very much, and I think it
16 would shorten the trial drastically.

17 THE COURT: Were the payments made, Mr. Kwok, by
18 check?

19 MR. KWOK: They were.

20 THE COURT: Or were they made by electronic payments?

21 MR. KWOK: They were made by variety of means,
22 including written checks, including electronic transmittals,
23 including an American Express cards. We have provided all
24 those underlying records. And the exhibits that I just
25 mentioned are summaries of every line item of those entries.

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1 And it also shows where the money came from, how the
2 outstanding balances were paid. And if the defense would look
3 at that and compare those and do a spot check of the underlying
4 records, and so that they have confidence that we fairly and
5 accurately captured the raw data, again, we would very much
6 welcome that stipulation.

7 MR. RUBINSTEIN: I'll look at it, Judge. But I think
8 what they're missing is that they they're going on the
9 assumption that every penny that CASI spent was money that they
10 received from the federal government pursuant to this ATP
11 grant, and that's just not accurate. So I'll look at those
12 records, Judge, during the break between now and when the jury
13 gets up, if we have a break. And I have them in the back. I
14 have big books.

15 THE COURT: Well, then, Mr. Rubinstein is asking for
16 three alternates, because he thinks it's going to go three
17 weeks.

18 MR. KWOK: We have no objection to that. I don't -- I
19 hope it doesn't take three weeks, but we have no objection.

20 THE COURT: I don't want to tell the jury it's going
21 to take three weeks, but I feel that I'll have to tell them it
22 might. We're in June, that's graduation period, and we're
23 going to lose jurors for that reason.

24 MR. RUBINSTEIN: Lots of weddings, your Honor.

25 THE COURT: What?

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1 MR. RUBINSTEIN: Lots of weddings.

2 THE COURT: Lots of weddings and lots of graduations.

3 Do we have a jury?

4 THE DEPUTY CLERK: Not yet. They're still downstairs.

5 MR. RUBINSTEIN: Your Honor, there's two other matters
6 I'd like to address with the Court.

7 THE COURT: Yes.

8 MR. RUBINSTEIN: First, the manner in which to refer
9 to Dr. Karron during the course of the trial. He has been
10 indicted as Daniel B. Karron, and actually that was -- he
11 doesn't really go by that name any longer. I was thinking that
12 possibly call him Dr. D. B. Karron, because I just intend to
13 refer to him as Dr. Karron, personally.

14 THE COURT: He's a Ph.D., is that right?

15 MR. RUBINSTEIN: Yes, your Honor.

16 MR. KWOK: We have no objection. We'll try to refer
17 to him as Dr. Karron as well.

18 THE COURT: All right.

19 MR. RUBINSTEIN: Your Honor, the last matter refers to
20 a subpoena that the government has served on defense, and I
21 would ask your Honor to quash this subpoena, 17C subpoena.

22 THE COURT: And the grounds?

23 MR. RUBINSTEIN: Yes, your Honor; that the government
24 must establish under Rule 16C that the material they are
25 seeking are relevant, admissible and specifically identified.

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1 By this definition, they can not use this subpoena as an end
2 run around Rule 16.

3 Moreover, it is evident from the nature of the
4 subpoena, which is conditional the defendant testifying.

5 THE COURT: I'm sorry?

6 MR. RUBINSTEIN: Which is conditional if the defendant
7 testifies, that the government is seeking impeachment material.
8 And I submit that this is absolutely prohibited on the use of
9 Rule 17C subpoena for impeachment purposes. And I cite U.S.
10 versus Weissman, 2002 Westlaw, 31857510 -- 31857510, Southern
11 District of New York case.

12 THE COURT: 318?

13 MR. RUBINSTEIN: 575.

14 THE COURT: Federal Supplement, 575?

15 MR. RUBINSTEIN: It's Westlaw, your Honor.

16 THE COURT: Oh, I'm --W-e-i-s-m-a-n?

17 MR. RUBINSTEIN: It's W-e-i-s-s-m-a-n.

18 THE COURT: I better get the cite again because I'm
19 used to Federal --

20 MR. RUBINSTEIN: I'll give it to you. The Judge
21 was --

22 THE COURT: 1990?

23 MR. RUBINSTEIN: BSJ, December 26, 2002. I'll give
24 you --

25 THE COURT: BSJ, Barbara Jones.

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1 MR. RUBINSTEIN: Robert.

2 THE DEPUTY CLERK: Thank you.

3 THE COURT: You got a copy?

4 Well, as I read the case, you're relying on Mr., the
5 Jones, Barbara Jones case. She was dealing with a situation
6 where the defendant sought to obtain the records of a third
7 party prior to trial, third party being not -- not the
8 defendant's records. So why is it relevant to this case, Mr.
9 Rubinstein?

10 MR. RUBINSTEIN: Well, it shows that they're just not
11 entitled to records for cross-examination purposes. You know,
12 we also have the potential of a fifth amendment issue. I never
13 saw a defendant being subpoenaed to get the defendant's
14 personal records and tax returns. I mean, they have the
15 ability to get tax returns.

16 THE COURT: Well, this subpoena is only to take place
17 in the event that the defendant takes the stand. Now, I don't
18 know whether -- I don't see the -- I'll take further briefing
19 on it, but I don't the Barbara Jones decision here deals with
20 this situation. This was to use in cross-examination, as I
21 understood it, subpoena in the event. So I need some, I need
22 some memorandum supporting your motion to quash, Mr.
23 Rubinstein, and the government can reply. You can give that to
24 me in the next day or so.

25 MR. RUBINSTEIN: Fine, your Honor.

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1 THE COURT: Okay, anything else to take up?

2 MR. RUBINSTEIN: Yes, your Honor. I just want to
3 submit to your Honor -- I hope it's legible enough, and some of
4 these are duplicate names what the government has indicated
5 might be relevant names that will come up.

6 THE COURT: Oh, yeah, we better have the names of
7 people who will testify.

8 MR. RUBINSTEIN: Let me check the two so I could cross
9 out my list so you don't have to --

10 THE COURT: I don't have the Government's list.

11 MR. KWOK: I have an extra copy. I believe I handed
12 one to your Deputy.

13 THE COURT: My clerk? He's not here.

14 MR. KWOK: I can hand you my copy.

15 THE COURT: How would I know who these people are? In
16 other words, some of these names are pretty pretty common, Mr.
17 Kwok. I need some identification for the jurors.

18 MR. KWOK: Which names are you referring to, your
19 Honor?

20 THE COURT: Well, there's a name -- number five is the
21 person named Farnsworth, who is a -- I don't know where they
22 come from or where they're located or anything of this sort.
23 There's a pitcher for the Yankees by that name and -- kind of
24 wild -- but I suppose he might have a wife or something, but
25 it's not an uncommon name. Feldman is a pretty common name.

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1 MR. KWOK: I understand, your Honor. If we could
2 propose making further inquiries if they answer affirmatively
3 to those, because I understand --

4 THE COURT: Just where they live. I mean, these
5 people, the jurors come from the Southern District. If these
6 people live in Washington or something like that, then their
7 concerns will be alleviated. If that person is a member of
8 such and such family that lives down the street, you know.

9 MR. KWOK: Sure, we'll try to refine the list for your
10 Honor.

11 THE COURT: The jury should be in in about five
12 minutes, ten minutes. So let's -- and I have to go get a and
13 so let's -- try and get them up here early. Somebody -- I need
14 some identification. We have some address or something of that
15 sort, Mr --

16 MR. RUBINSTEIN: Yes, I'll give you the out-of-state
17 ones, your Honor.

18 THE COURT: This list -- my Lord, this is a long list.

19 MR. RUBINSTEIN: The names are going to come up during
20 the trial. They're not necessarily -- they're not all
21 witnesses, Judge, but they're just names that are going to be
22 mentioned, we believe, during the course of the testimony. I
23 thought that's one of the things that the Court wanted.

24 THE COURT: Well, I see one is a plumbing company so.
25 The Financial Institute of Standards and Technology in

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1 Washington?

2 MR. KWOK: Gatersburg, Maryland.

3 THE COURT: Tia Lorraine.

4 MR. KWOK: That we don't know. We got that name from
5 one of the e-mails the defense produced.

6 THE COURT: Okay. What am I going to do about your
7 list, Mr. Rubinstein?

8 MR. RUBINSTEIN: Well for out-of-staters, your
9 Honor --

10 THE COURT: I mean Dunn Levy is a very common name.

11 MR. RUBINSTEIN: Pardon?

12 THE COURT: Dunn Levy and Levin Mason, very common
13 names.

14 MR. RUBINSTEIN: Dunn Levy is a bookkeeper from New
15 York.

16 THE COURT: Murphy is a common name, but that's got
17 some identification here. John Mason, Miller, Ross.

18 MR. RUBINSTEIN: Miller is an attorney, your Honor.

19 THE COURT: In New York?

20 MR. RUBINSTEIN: Yes.

21 THE COURT: Maybe I ought to give you the list and put
22 some address on it.

23 MR. RUBINSTEIN: Okay. Murphy is a professor.

24 THE COURT: I'll give you back the list so you can --

25 MR. RUBINSTEIN: Okay.

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1 THE COURT: The jury's here.

2 Why don't I give this to you, Mr. Rubinstein. You can
3 fill it in. We'll get the jury in and send them to -- it's my
4 practice to get them to go to the men's and ladies' room before
5 we start.

6 Maybe you ought to do the same.

7 THE COURT: All right? Bring them in.

8 THE DEPUTY CLERK: Judge, if they're going to use --
9 if counsel are going use the restroom, they'll have to use the
10 restroom outside because the jurors are going to be using the
11 one in here.

12 MR. RUBINSTEIN: You want us to do that before they
13 come in?

14 THE DEPUTY CLERK: I don't know.

15 THE COURT: What do you want to do? You want to use
16 the restroom now?

17 MR. RUBINSTEIN: Yeah, but I guess I'll wait till they
18 all walk in rather than collide with them.

19 THE COURT: All right. Okay. They'll do it after
20 they've started using the restrooms, they'll use the one
21 outside.

22 Don't forget the biographical material for those
23 witnesses, Mr. Rubinstein.

24 MR. RUBINSTEIN: Yes, your Honor.

25 (Recess)

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1 (A jury of 12 and 4 alternates was chosen and sworn)

2 THE COURT: Mr. Monteguedo has to give those jurors
3 slips.

4 So, I will give you these starting instructions,
5 because some of you may never have served as jurors before and
6 not know exactly what to expect, and also some people may not
7 have served for some time and could use a brush-up on what jury
8 service will be like in this case.

9 So, as I told you this morning, in the American system
10 of justice the judge and the jury have separate roles. My job
11 is to instruct you as to the law that governs or controls the
12 case, and I will give you those instructions at the end of the
13 trial. Your job as jurors is to determine the facts based on
14 the evidence presented at the trial.

15 You are the only triers of fact, and your decisions on
16 the factual issues will determine the outcome of this lawsuit.

17 I want to caution those of you that have watched TV
18 versions of trials not to be distracted into attempting to
19 evaluate the performance of the lawyers in the court. It is
20 the parties whose interest will be affected by the outcome of
21 this trial, and your determination should be based solely on
22 the evidence in this case.

23 You must pay close attention to all the evidence
24 presented. Evidence consists only of the testimony of
25 witnesses, documents and other things admitted as evidence or

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1 agreed to by the attorneys.

2 Certain things are not evidence and must not be
3 considered by you. I will list them for you now:

4 One, statements, arguments and questions by lawyers
5 are not evidence, nor are my own statements to you.

6 Two, objections to questions are not evidence.
7 Lawyers have an obligation to their client to make an objection
8 when they believe evidence being offered is improper under the
9 laws of evidence. You should not be influenced by the
10 objection or by the court's ruling on that.

11 If the objection is sustained, ignore the question and
12 any answer that has been given. If it is overruled, treat the
13 answer like any other. If you are instructed that some item of
14 evidence is received for a limited purpose only, you must
15 follow that instruction.

16 Third, testimony of the court is excluded. I told you
17 to disregard that testimony, and it must not be considered.

18 Fourth, anything you may have seen or heard outside of
19 the courtroom is not evidence and must be disregarded.

20 You are to decide the case solely on the evidence
21 presented here in the courtroom. In deciding the facts of the
22 case, you will have to decide the credibility of the witnesses,
23 that is, how truthful and believable they are.

24 Now, how do you decide what to believe and what not to
25 believe? Well, you are going to listen to the witnesses, watch

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1 them and observe them and then decide as you would decide such
2 questions in your ordinary life. Did they know what they were
3 talking about? Were they candid, honest, open and truthful, or
4 did they have a reason to falsify, exaggerate or distort their
5 testimony? Sometimes it's not what a witness says but how he
6 or she says it that may give you a clue as to whether or not to
7 accept that witness's version of an event or an incident as
8 credible and believable. In short, the way a witness testifies
9 may play an important part in your reaching a judgment as to
10 whether or not you can accept the witness's testimony as
11 reliable.

12 As the trial proceeds, you may have impressions of a
13 witness, but you may not allow these impressions to become
14 fixed or hardened, because if you do, in a sense you foreclose
15 consideration of the testimony of other witnesses or other
16 evidence that may be presented after the witness you heard, and
17 that would be unfair to one side or the other.

18 A case can be presented only step by step, witness by
19 witness, before all the evidence is before you.

20 We know from experience that frequently we will hear a
21 person give his version of an event which sounds most
22 impressive and even compelling, and yet when we hear another
23 person's version of the same event, or even the same witness
24 cross examined with respect to it, what seemed to be very
25 compelling and impressive may be completely dissipated or

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1 weakened. I am simply saying or trying to say to you in very
2 simple terms: Remember that there may be another side to any
3 witness's testimony.

4 You will use your common sense and good judgment to
5 evaluate each witness's testimony based on all of the
6 circumstances.

7 I cannot emphasize too strongly that you must keep an
8 open mind until the trial is over. You should not reach any
9 conclusions until you have all the evidence before you. In
10 order to ensure that you decide the case only on the evidence
11 and are not influenced by anything that might occur outside the
12 courtroom, I must give you a set of specific instructions.

13 First, do not discuss this case amongst yourselves or
14 with any other person. You will have the opportunity and
15 indeed the duty to discuss the case amongst yourselves after
16 all the evidence is in and the case is given to you to discuss
17 and decide in the jury room. Now let me explain the reasons
18 for that.

19 The reason for that rule is, first, if you start
20 discussing it beforehand, before you have all the evidence
21 before you, you won't have all the evidence before you, and you
22 are apt to reach a prejudgment instead of reaching a balanced
23 judgment based on all of the evidence. Jury deliberations
24 contemplate that those conferences will take place after trial
25 when all of you are assembled in the jury room sitting around

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1 the table, each of you exchanging views and what have you, and
2 each of you listens to the others, and that's the way the jury
3 deliberation is supposed to be conducted.

4 If you start having conferences before all the
5 evidence is in, the chances are you won't have everyone around
6 the room or sitting around the table discussing that issue but,
7 rather, you only have a few of you. Furthermore, therefore the
8 other people would be excluded from the deliberation and
9 wouldn't be able to exchange their views. Furthermore, you
10 wouldn't have all of the evidence before you. So, the rule is
11 you should not discuss the case until the case has been
12 completed.

13 Next, you are not to read anything in the newspapers
14 or elsewhere about this case if that should occur. Now, I
15 don't think that that's going to occur, but what sometimes
16 occurs is that there are articles in the newspaper that bear on
17 a case and that are not directly relevant but they have some
18 relevance. The trouble with viewing that or reading those
19 articles if they seem to bear on the case, is that you are
20 obliged to tell me that you have read something that bears on
21 it, and then I have to conduct what is called a tainting
22 hearing, and what I have to do is make sure that this outside
23 bit of newspaper or what you saw on television didn't taint
24 you, in other words, cause you to be less than fair and
25 impartial in the case, and that you by recounting what you saw

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1 on television or read on the radio didn't taint the other
2 jurors. So, I have been through a case in which it took almost
3 half a morning to conduct a taint hearing, and no jury needs
4 that. That's an extra day of service, and you have better
5 things to do. You are all giving up your time. So, don't read
6 anything that bears on the case. Just don't do it. It just
7 means that we will have to have a taint hearing, and that's
8 time.

9 Next, you are not to allow anyone to speak to you
10 about this case. If you are approached by anyone to speak
11 about the case, politely tell them that the judge has directed
12 you not to do so. If any person seeks to contact you about the
13 case, you are required to report the incident promptly to me.

14 Also, be sure that I am informed if any person that
15 you know comes into the courtroom. Now this is a public trial,
16 and it's perfectly appropriate that they come into the
17 courtroom, but it is important that you do not hear from your
18 friend what may have happened in the court while the jury was
19 not present. If you should see a friend or relative come into
20 the court, please send a note to me through the clerk at your
21 first opportunity, and then I can take steps to make sure that
22 they don't hear something that could possibly be related to you
23 and taint the jury.

24 The attorneys, the parties and the witnesses are not
25 supposed to talk to the jury outside the courtroom, even to

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1 offer a friendly greeting, and the jury is not supposed to talk
2 to them. So, if you happen to see any of them outside the
3 courtroom, they will not and should not speak to you. Please
4 take no offense at this; they will only be acting properly and
5 professionally by not doing so.

6 Finally, let me say a few words about trial procedure.
7 First, the lawyers have the opportunity to make opening
8 statements to you, and they will do that shortly. These
9 statements are not evidence. They serve no purpose other than
10 to give you an idea in advance of the evidence what the lawyers
11 expect you to hear from the witnesses. These statements allow
12 the lawyers to give you a preview of what this case is all
13 about, but the only evidence will come from the witnesses and
14 the exhibits.

15 Now, after the opening statements you will hear the
16 testimony of the witnesses. The government's witnesses go
17 first. Each witness will first give direct testimony. Then he
18 may be cross-examined by the other side. Sometimes there is
19 redirect testimony and recross examination. Also, exhibits and
20 stipulations of fact may be received into evidence.

21 Following the government's case, the defendant may if
22 he wishes present witnesses and other evidence. Those
23 witnesses, if the defendant chooses to present witnesses, will
24 be examined and cross-examined just as the government's
25 witnesses were. If the defendant chooses to present evidence,

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1 it's possible that the government would then present some
2 rebuttal to that evidence.

3 And after all the evidence has been received, the
4 lawyers then have an opportunity to sum up. They may review
5 the evidence and make arguments to you as to what conclusions
6 they think you should or should not draw from the evidence.
7 These arguments also are not themselves evidence, but they may
8 be helpful to you in reviewing the evidence during your
9 deliberations.

10 After these arguments, or summations as they are
11 called, I will give you detailed instructions as to the law
12 that applies and controls in this case, and you must follow my
13 instruction. Then you will go to the jury room to deliberate
14 and discuss the evidence in order to decide the facts and
15 render a verdict.

16 All right. We will now begin with the government's
17 opening statement. Mr. Everdell.

18 MR. EVERDELL: Thank you, your Honor.

19 Ladies and gentlemen, the defendant, Dr. D.B. Karron
20 cheated the government out of hundreds of thousands of dollars.
21 In 2001 the defendant got what many scientists can only hope to
22 get. He was given a \$2 million grant from the federal
23 government to conduct his scientific research, \$2 million of
24 taxpayer money, and the only thing that the government required
25 in return for this money was that the defendant spend it on one

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Opening - Mr. Everdell

1 thing and one thing only: His research, nothing else.

2 But the evidence will show that instead of putting
3 that money towards his research, the defendant chose to spend
4 much of that money on himself. For over a year and a half the
5 defendant used the grant money as his own personal piggy bank
6 to pay for personal expenses like meals at restaurants,
7 electronic gadgets like a GPS tracking device and a digital
8 camera, even a blender and shoe rack for his apartment, and he
9 bought all these things even though he was already paying
10 himself \$175,000 in salary out of the grant funds. And when
11 several different people told the defendant on multiple
12 occasions that he could not use the grant money to pay for
13 these sorts of things that he wanted to pay for, the defendant
14 ignored them and did it anyway and in the end misspent roughly
15 half a million dollars.

16 Ladies and gentlemen, my name is Christian Everdell,
17 and together with my colleague Steve Kwok and case agents
18 Rachel Ondrik and Kirk Yamatani from the Department of Commerce
19 and paralegal Noha Moussa, we represent the government in this
20 trial.

21 Now, in the course of the next few days you will hear
22 from several witnesses, and you will see the evidence in this
23 case, and if you have ever taken part in a real life trial, you
24 will quickly see that it's not like it is on TV. It's not
25 going to be like a TV show like Law and Order where the

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Opening - Mr. Everdell

1 witnesses come in and they tell their story in chronological
2 order and it's all wrapped up neatly in an hour. Instead, the
3 proof is going to come to you in bits and pieces, because each
4 witness knows his or her own small portion of the larger
5 picture of this case. So, this opening statement is my chance
6 to give you an overview, a road map, that I hope will help you
7 understand the evidence that's to come.

8 So, what will the evidence in this case show? You
9 will learn that in 2001 the defendant and his company, Computer
10 Aided Surgery, Incorporated, or CASI, applied for and received
11 a \$2 million grant from the federal government to pay for his
12 research in computer imaging. Now, this particular grant was
13 supposed to last for three years, with the \$2 million being
14 disbursed in installments over that three-year time period.

15 As you might expect, with such a large amount of
16 taxpayer money involved in this kind of grant, the federal
17 government has certain rules that the recipient must follow
18 when he receives this kind of money and what he can spend the
19 money on. You will hear what those rules are, but the main
20 rule is simple and straightforward and it's this: You must
21 spent grant funds on your research. That means that the grant
22 money must be spent on things that directly impact and further
23 the research. The funds cannot be used to pay for things such
24 as rent and utilities for your office space. Those costs are
25 just the cost of doing business. Every company has those, and

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1 they are not covered under the grant. And it means that the
2 funds cannot be used to pay for personal expenses like meals or
3 personal debts. Those are not research costs, and they are not
4 covered either. And you will also hear that in order to keep
5 track of the grant money the government requires the grant
6 recipient to submit a budget that outlines what you are
7 spending your grant money on. All the categories of expenses
8 are laid out -- salary, travel costs, equipment costs -- and
9 again the rule is simple, you must stick to your budget. That
10 means if you tell the government you are going to spend the
11 grant money for certain things, then you must spend the grant
12 money for those things; and if you want to make any significant
13 changes to your budget, you must get approval in writing.

14 Now, those are the rules in a nutshell, and they are
15 basic, simple and easy to understand, and you will hear that
16 these rules were repeated for the defendant on several
17 different occasions by grant officials. You will also hear
18 that the defendant was given these rules when he received the
19 grant and signed a form acknowledging that he understood those
20 rules, and you will also hear that the defendant was told time
21 and time again by grant officials and by his own employees that
22 he could not use the grant funds to pay for the things he
23 wanted to pay for. But the evidence will show that the
24 defendant refused to listen to them and went ahead and used the
25 grant money as he wanted.

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1 And how did he misspend this money? Well, to give you
2 just one example, ladies and gentlemen, you will hear the
3 defendant set up his company, CASI, in the living room of his
4 own apartment in Midtown Manhattan, and the evidence will show
5 that when CASI received its first installment of \$150,000 in
6 grant funds, the first thing the defendant did was transfer
7 \$75,000 of it, half of it, to himself and used it to pay for
8 personal debts like his credit card bills. And then he used
9 those same funds to pay himself several thousand dollars in
10 rent payments for CASI's use of his living room, despite the
11 fact that he was still living in his apartment and despite the
12 fact that he had been told specifically on multiple occasions
13 that rent was not an allowable expense under any circumstances.

14 The defendant's misuse of the grant funds does not end
15 there. You will also hear that he used grant funds to pay for
16 so-called equipment, electronic gadgets like a GPS tracking
17 device and a digital camera and household items like a blender
18 and shoe rack, items that had nothing whatsoever to do with his
19 research. And you will hear that the defendant used grant
20 funds to pay for thousands of dollars worth of dental and other
21 cosmetic medical procedures. And you will also hear about how
22 the defendant adamantly resisted efforts of everyone around him
23 to convince him that he was spending money on things that
24 weren't allowed and to fix what he had done before.

25 For example, you will learn that the defendant hired a

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1 bookkeeper to go through the company's books and records in
2 connection with the first year audit of his company, and when
3 that bookkeeper reclassified certain expenses and changed them
4 from grant expenses to nongrant expenses according to the
5 rules, the defendant went back into the books and changed them
6 right back again so that he could be sure that grant funds
7 could be used to pay for them.

8 The end result of all this, ladies and gentlemen, is
9 that the defendant has been charged in a one count indictment
10 with crime of misapplying government grant funds.

11 So, how is the government going to prove its case to
12 you? Here is how:

13 You will hear testimony from two of the government
14 officials that were assigned to administer the defendant's
15 grant, and they will explain to you what the rules of the grant
16 are and which expenses you can and cannot use grant funds to
17 pay for. And they will tell you how they spoke to the
18 defendant on numerous occasions both in person and on the phone
19 and told him over and over again that he could not use grant
20 funds to pay for things such as rent and utilities and other
21 nonallowable expenses. And you will hear from two auditors who
22 looked at the company's books, and they will tell you that when
23 they looked at the company's expenses and separated out the
24 expenses that were allowable under the grant from the expenses
25 that were not allowable under the grant, they found that

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1 hundreds of thousands of dollars of government money had been
2 spent on expenses that were either not in the budget or were
3 unrelated to the research that the grant was supposed to fund.

4 And you will also hear from three people who worked
5 for the defendant at CASI, his company. They will tell you
6 what it was like to work with the defendant, how he refused to
7 listen to their advice about what he could spend the grant
8 money on, how he changed the bookkeeping entries in the CASI
9 books and records to make sure that certain expenses were
10 classified as research-related expenses so that they could be
11 paid for with grant funds, and how he told them he thought he
12 could do what he pleased with the grant money.

13 Finally, you will be seeing a number of documents that
14 will show you the fraud in clear black and white. In
15 particular you will see an analysis of the defendant's personal
16 bank account and the bank accounts of CASI, and you will see
17 how virtually 100 percent of CASI's income was from the grant
18 funds and how those funds went to pay for all of the
19 nonallowable expenses that I mentioned before.

20 Now, before I sit down, ladies and gentlemen, I would
21 like you to do three things during the course of this trial:

22 First, pay close attention to what the witnesses have
23 to say, and pay close attention to the exhibits that are
24 introduced into evidence.

25 Second, listen very carefully to Judge Patterson's

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1 instructions on the law and follow them closely.

2 Third, and most importantly, use your common sense,
3 the same common sense that you use every day to assess
4 situations and evaluate what people tell you. Your common
5 sense serves you very well in the outside world, and it will
6 also help you do justice in this case.

7 The government submits that if you do those three
8 things -- you pay close attention to the evidence, you listen
9 to the judge and you use your common sense -- you will make the
10 only finding that will be consistent with the evidence and the
11 law: That the defendant Daniel Karron is guilty as charged.
12 Thank you.

13 THE COURT: Thank you, Mr. Everdell.

14 Mr. Rubinstein?

15 MR. RUBINSTEIN: Yes, your Honor. Thank you, Judge
16 Patterson. Ladies and gentlemen of the jury, let me
17 reintroduce myself. My name is Ron Rubinstein. I represent
18 the defendant here Dr. D.B. Karron.

19 You may ask yourself why is Ron Rubinstein getting up
20 here to give an opening when Judge Patterson has told us on a
21 number of occasions that the defense doesn't have to prove
22 anything in a criminal case, and that as Dr. Karron sits over
23 there he is presumed to be innocent. And we call upon the
24 government to prove the allegations that they made in their
25 opening remarks. We call upon them to prove beyond a

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1 reasonable doubt. But I'm going to tell you that they're not
2 going to even come close to beyond a reasonable doubt, because
3 you are going to find what Dr. Karron is and what he did, and
4 you are going to ask yourself at the end of the case why is
5 this person sitting here in the federal courthouse being
6 charged with this serious crime.

7 Dr. Karron received his Ph.D in 1992 from New York
8 University. He was a visiting scientist at New York University
9 after he graduated. He received a fellowship in cardiac
10 surgery at New York University, involved in cardiac imaging.
11 He received a grant -- not a grant -- a contract from a federal
12 agency. You are going to hear a lot of acronyms. The federal
13 people, everything is letters that they put together, and he
14 received a contract from a government agency called BABR, and
15 that was in 1999. Before that he taught at the city
16 universities. And when he received his contract, he formed a
17 corporation called CASI, Computer Aided Surgery, because that's
18 his specialty, using computers to aid people in surgery.

19 He had this company. He was an employee of this
20 company. Every penny he made he put into CASI, and CASI would
21 pay him a salary. What happened over time, after this BABR
22 contract ended -- and that was for a few hundred thousand
23 dollars over three years -- they extended it. They have
24 different phases, and they gave him a phase 1, and he produced,
25 then they gave him phase 2 and then phase 3. What happened is

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1 that CASI the corporation had lean years, and Dr. Karron loaned
2 the corporation that he was a stockholder in monies over the
3 period of time.

4 So, lo and behold what happens is he gets this federal
5 grant. At the time he gets this federal grant from the
6 National Institute of Standards and Technology, under the
7 advanced technology program, CASI, his corporation that he is
8 an employee of, owes him in excess of \$100,000. Now, you are
9 going to find that he might be a very good scientist but he is
10 not the greatest manager in the world. So, he gets this money,
11 and he starts paying back the monies that were owed to him by
12 CASI corporation for the period of time prior to getting the
13 grant started. He got his first check on the grant in October
14 1, 2001, and in order to get this grant, he had to submit a
15 budget. He drew the budget. He submitted the budget. The
16 budget called for him in the first year to get \$800,000. The
17 budget called for him to get \$175,000 in salary. The budget
18 called for fringe benefits of \$110,000 and other things.

19 And what happened is -- why did NIST give him this
20 money? NIST you are going to learn is a program that gives out
21 \$60 million a year in rewards, in grants. They are for
22 broad-based economic benefits. The concepts that the
23 scientists present to NIST, to apply and get these funds, is
24 that the end result of your research, even if that's five, ten
25 or 20 years later, will be commercialized in the marketplace

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1 and therefore benefit the United States by this research. As a
2 matter of fact, the way the program works is that even after
3 the three years and he develops a product, that 40 percent of
4 the time you are going to find that these companies that get
5 this grant money develop products that are great for this
6 country and great for man kind and 60 percent fail. But that's
7 OK. That's OK. The end product, whatever Dr. Karron develops,
8 he is entitled to keep. The government has no financial
9 interest in it. They are interested in scientists doing things
10 that are going to benefit man kind for the next hundred years.
11 That's the government program in this area.

12 So, one of the main things to get these grants -- and
13 two thirds of the grants are given to small companies, and Dr.
14 Karron's company was a very, very small company -- the grant
15 has to be the priority of your company. You have to be
16 devoting the majority of your time to this program. This is
17 innovative and high-risk technology we are talking about, and
18 the project here is of national medical importance, scientific
19 and technological merit of a digital morse theory based on --
20 digital morse is some mathematical theory that Dr. Karron works
21 with, and it is for imaging based on antilogical segmentation
22 registration, reverse engineering in modeling phenomenon for
23 images. The concept is in the end result that through the use
24 of computers it's going to better aid in diagnostic treatment
25 and planning so that it will be easier for doctors to operate

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1 and remove -- one of the illustrations is cancer tumors.
2 That's what this project is call about. I will try and say it
3 in a better way. To develop and demonstrate novel computer and
4 engineering technology based on the digital morse theory, to
5 enhance the quality and usability of computerized anatomic
6 models for precise and accurate cancer treatment therapies.
7 Just think about it, it makes like a map of an egg, where all
8 the white is in one place, the yellow is another place, the
9 yellow being the tumor in a 3D fashion, and this is the concept
10 that NIST through the ATP program gave Dr. Karron a grant for
11 \$2 million over three years.

12 Now, this is high tech. It's also high risk. And the
13 government gave Dr. Karron money to make mistakes, because
14 that's what science is. Science is experimenting. You make a
15 mistake, you try something else. And he, Dr. Karron, submits a
16 budget. They don't disapprove his budget. They're giving
17 him -- they, NIST, APD, are giving Mr. Karron's company
18 \$800,000. He submits a budget. He has equipment 300,000, he
19 has employees 300,000. He has fringe benefits. And those are
20 round numbers I'm using right now. But fringe benefits he has
21 \$110,000.

22 This budget is approved, and the prosecution here
23 wants to say that this budget, anything he spends different
24 than this budget is stealing. And I submit to you that this
25 budget is a living, breathing thing, that this budget is

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1 amendable at any time, because as you are going through science
2 you find out that, gee, I don't need all of these employees, I
3 don't have to spend \$100,000 on this fellow, I'm a teacher, I
4 will get interns for nothing, or \$100 a week, and they will
5 come and work, and I am going to spend my money on equipment.

6 Nobody is going to come and testify that Dr. Karron
7 didn't work six, seven days a week, probably 80 to 100 hours a
8 week on this project. He wasn't going to the Bahamas or Aruba
9 or anyplace else. He was living this project, and he expected
10 to get additional funding for this concept. He was in
11 negotiation with the State of New York. Tragically, as we all
12 remember, just prior to October 1, 2001 when this grant
13 started, this CASI grant started, 9/11 happened, and the state
14 of New York cut back on their funding. They cut back on their
15 funding.

16 So, he gets the money. And, by the way, he is
17 entitled -- you are going to find out from these witnesses he
18 is entitled to take expenses that happened before October 1.
19 He is allowed to get start-up pregrant money for he starts. He
20 is also allowed to contribute his own equipment, because the
21 grant calls for about a 5 percent cofunding. In other words,
22 the recipient has to come up with about five percent, which in
23 this case is in the neighborhood of 35 or \$36,000.

24 And I stand here and I tell you that Dr. Karron is
25 guilty of making mistakes, he is guilty of not dotting every I

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1 and crossing every T, he is guilty of not following the
2 guidelines, and he is guilty of not having a manual in place.
3 But they are accusing him of intentionally misusing funds. He
4 didn't spend more than the money they gave him, and I submit to
5 you that technically he may have misused the funds by
6 redirecting monies allocated to personnel to equipment, but
7 this benefited the project. The concept I submit to you is
8 what is allowed and what is allowable, and I say to you
9 equipment, purchasing equipment at a number higher than what
10 you originally were budgeted for, that you used in this
11 project, is allowable, and the defendant believed that as long
12 as he gave reasonable use, that it was OK because you could
13 amend the budget.

14 So, here is Dr. Karron. CASI is situated in his
15 apartment. His apartment becomes the equivalent of a computer
16 lab. Their agents -- I am taking it out of their agent's own
17 testimony, who came to that apartment, and you would not call
18 it an apartment. You would call it a computer lab where he
19 lives. And he made renovations, because he had -- remember,
20 you are going back to 2001. The computers aren't as small as
21 they are today; they generate a lot of heat; they need to be a
22 dust-free atmosphere. There is all kinds of renovations that
23 go in, and the purpose of those renovations are for the
24 science, for the equipment.

25 The government is selective in what expenses he made

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1 that they're complaining about. And when they say that he is
2 not allowed to spend money on rent, well, that's in the
3 ordinary course, that's in the rules, we concede that. But
4 they also, the grant administrators, could adjust the rules.
5 Because the concept of rent, as the government suggested in
6 their opening, is that most companies, they're doing different
7 things, so the rent, it's hard to attribute rent to one
8 specific thing if they are working on three or four projects.
9 Here CASI was working on one project. The electric utilities
10 went up double, we are going to show you, in the time that the
11 grant was in operation.

12 And what did Dr. Karron do? He did everything he
13 could in his power to make this project work. And he hired
14 accountants. He hired bookkeepers, he hired accountants, and
15 he hired an accountant who was paid, Ms. Hayes. She is the
16 star government witness, his accountant, his accountant who
17 improperly wore two hats because she also became the auditor
18 for the project, and she is supposed to be submitting the audit
19 budget, the audit, after the first year. Well, the first year
20 ended September 30, 2002. You know when Ms. Hayes got that
21 budget in? In June of 2003. She got some extensions.

22 So, in the end Ms. Hayes, who was paid by Dr. Karron,
23 was really not working for him, she was working for the
24 government.

25 And I submit to you you are going to find out that bad

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1 audits are not criminal. There are specific legitimate
2 pathways outlined in the rules to resolve audit problems
3 without making it criminal, and a grant recipient who is
4 attempting to resolve a difference of opinion may have
5 different procedures. Dr. Karron says I'm entitled to these
6 fringe benefits because all of my employees are entitled to
7 these fringe benefits.

8 They want to say he is not entitled. They talked
9 about medical. Yes, there were specific medical expenses, but
10 he has a right to negotiate these things civilly. And even if
11 they don't agree with him civilly, it doesn't mean that it was
12 criminal. Because the judge is going to tell you what the law
13 is, and I am not going to trespass on his province, but you are
14 going to find that Dr. Karron never intended to commit a crime.
15 And what I'm going to show, what he did in his own convoluted
16 way is going to prove to you beyond a reasonable doubt that he
17 never intended to commit a crime.

18 He had four different color checks for each different
19 company that he had that was related to this. He then scanned
20 every single document, every single document he ever came in
21 touch with. He didn't hide anything. I call upon them to
22 prove. They said it, that he changed records. He scanned
23 every single document he had, and they were in the computer,
24 and he hid nothing, nothing. How do you steal when you keep
25 records? This is a ma and pa science operation store. It's a

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1 ma and pa store. This is not IBM. This is not Xerox,
2 Microsoft. This is a small company that self insures people
3 from the first dollar, and they say -- and this grant was
4 suspended. They didn't terminate the grant. They suspended
5 it. He believes that the grant is going to get restarted,
6 because everybody knows that he is making progress
7 scientifically on this grant. All their witnesses are going to
8 say that, that he is going ahead and doing things. So, when
9 they suspend the grant, they tell him that he is \$54,000 short
10 on cofunding, his money that should have been put in by June
11 27, 2003, a year and nine months after the grant is given,
12 cofunded. Dr. Karron says I did cofund, I gave the equipment,
13 I'm entitled to an offset for the equipment that CASI had from
14 the BARBR program that we donated to this project. But the
15 grant is suspended. And what does a person in business do? He
16 goes and takes a loan on the apartment, on a line of credit,
17 and he puts \$60,000 into CASI to pay bills and keep the project
18 going, \$60,000 of his own money that he borrowed from himself.
19 And it's not the only time he borrowed money from himself to
20 put in the CASI during this grant period. And of course the
21 grant people say you weren't supposed to do that, you were
22 supposed to give us the 60,000, so we are still keeping you
23 suspended even though you are spending this 60,000 on
24 grant-related items, even though you are paying back bills that
25 you incurred before the grant was suspended. He keeps going

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1 with the project because he believes, hey, they've got to keep
2 the budget going because I'm working hard and I'm doing
3 everything right here, and I have all the records, and let the
4 accountants decide what is right or wrong and tell me.

5 Ms. Hayes actually did his personal tax returns. I
6 mean they gave this money to Dr. Karron, a person who hadn't
7 paid his taxes in three years. That's the kind of manager he
8 is, but he is not a crook. He is not a crook. And they talk
9 about the fringe benefits, and I submit to you that one of the
10 main reasons they say that he took money that he wasn't
11 entitled to is that he didn't have a manual that said what the
12 fringe benefits are. Do you know who creates the manual? Dr.
13 Karron does. There is not even a review system to say we don't
14 like your manual, Dr. Karron, you can't be having dental bills
15 and personal surgery and what have you. No, if we had it
16 written, it would be OK. So, because it wasn't written, he is
17 a crook.

18 (Continued on next page)

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862ZKAR3

Opening - Mr. Rubinstein

1 MR. RUBINSTEIN: So that tells you how significant the
2 manual is. And I submit to you that there came a time that he
3 did start. They did prepare a manual. It was after the grant
4 was suspended, but they did prepare a manual. And all the
5 items, which the fringe benefits, they were budgeted for
6 110,000 a year, they spent less than \$110,000 a year. Most of
7 the employees that Dr. Karron had, who were full-time
8 employees, were college professors and people at academia who
9 had their own health insurance. So they didn't need the
10 benefit. But if someone needed the benefit, he gave child care
11 to a bookkeeper.

12 They talk about the rent. I submit to you that
13 doesn't prove any criminality. Most of the rent that was paid
14 to Dr. Karron was rent that was due him prior to the grant.
15 They just didn't have the money so they didn't, they didn't pay
16 it.

17 And also there's little question that he could've
18 gotten permission to have the rent, because it wasn't what they
19 call an indirect expense any more, because it was the only
20 expense for that project. And there was no attempt to hide
21 that these checks were written for rent. It's on the memo of
22 the checks. Does he intend to commit a crime if he does that?

23 Part of this \$500,000 they're talking about are on
24 salaries, salaries of other people that they disallowed. The
25 government order, disallowed. Why? He had a manager, an

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Opening - Mr. Rubinstein

1 operations manager. First year submitting a budget, Gurfein's
2 making \$100,000. He fires Gurfein. He hires somebody for
3 30,000, but they never approved this person. They didn't
4 disapprove the person. The person has credentials. I think
5 he's going to be a government witness. Bob Benedict has
6 credentials that you're going to say, this is the kind of
7 person you would want involved in a grant like this from the
8 business standpoint, but we disallow it; therefore, you stole
9 it 'cause you gave it to Benedict to be your manager.
10 They disallowed these salaries retroactively.
11 They talk about the loan, \$75,000 loan. As I said, he
12 had accountants. This was put on the books as a loan.
13 \$75,000. What happened? That was in November, October or
14 November of 2001.
15 Before the year was out, in August of 2002, they made
16 accounting adjustments where they charged him and made the loan
17 and the income. So it became part of his salary. The
18 accountants said, this is your salary. He took it as salary.
19 And you're going to find that during the course of this grant
20 in the first year he wasn't taking money. He didn't take his
21 first paycheck -- started October 1st, until May, I think it's
22 May 11th, 2002. And the accountants had to beg him to take
23 more paychecks because he wanted to make sure that there was
24 money in the till.
25 You're going to find out from the bookkeepers, he

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Opening - Mr. Rubinstein

1 would ask, how much money do we have in the bank. And he
2 didn't bounce any checks. When he got an accounting service,
3 bookkeeping service, outside payroll service, all kinds of
4 checks started to bounce. He made sure that the taxes were
5 paid. That's what he understood, taxes have to be paid. And
6 I'm going to prove to you people that he shouldn't have paid
7 any taxes, because he had what's called a net operating loss in
8 CASI that he could write off when he made a profit. So now he
9 was going to make a profit. What happened? The lawyers and
10 the accountants that he has with him, they decide to change the
11 company from CASI, Inc., Incorporated, to a CASI LLC. Well,
12 unfortunately, technically, technically when you do that, it's
13 a new entity. So because it's a new entity, he loses the
14 benefit of the carryover loss. So now he has to pay income tax
15 on the 175,000 that he probably wouldn't have to pay a dime if
16 they knew what they were doing.

17 But they're not criminals either. So just because you
18 make mistakes, does not make you a criminal. And you're going
19 to find at the end of this case, when I come back to you after
20 the government presents all its witnesses, and we present our
21 witnesses, you're going to say to yourself -- you might not
22 even have to leave the jury box to say that this man is not
23 guilty. Just keep an open mind, and I thank you very much for
24 your time.

25 THE COURT: All right. Your first witness.

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1 Government's first witness?

2 MR. KWOK: Government calls Betti Joyce Lide. With
3 your Honor's permission, we would like to hand out jury
4 binders.

5 THE COURT: These are exhibits that will be admitted
6 in evidence, you believe?

7 MR. KWOK: That's correct, your Honor.

8 THE COURT: Members of the jury, the government has
9 prepared individual jury folders which contain exhibits they
10 expect to have admitted in evidence. I would allow them to
11 distribute the individual books to each of you, but you're not
12 to look at any of the exhibits until they've been admitted in
13 evidence. So when the time comes that I admit something in
14 evidence, then you are entitled to look at that exhibit and
15 only that exhibit until it's admitted, till the other exhibits
16 are admitted in evidence.

17 So with that instruction, I'll allow the books to be
18 distributed to the jury and they'll be kept at your -- they'll
19 be ready for you in the morning so you can check your book.

20 I don't want to take up the time in the morning.

21 While they're distributing the book, I should give you
22 some instructions about the trial day while we're waiting for
23 this witness. I'd like to begin at 9:30 in the morning and run
24 until 1:00 o'clock with a single break sometime between 11:00
25 and 11:30, 10 minutes. Then come back at 2:00 after lunch and

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1 run from 2:00 till 4:00 without a break. That way you had
2 chance to get home before the evening rush. If a juror -- if a
3 witness is in the middle of something or has to get -- has
4 travel plans or something of that sort and is near the end of
5 the testimony, I may let them go a little longer so they're
6 through for the day and don't have to spend an extra day in a
7 city that they're not resident in.

8 But those are the general rules. Now, at the end of
9 every day you'll see people come into the courtroom. They're
10 here on other cases. I have other cases that go on after 4:00
11 o'clock period. Don't let them -- don't let them interfere
12 with your attention to the witnesses.

13 I believe that the government has those books.
14 They'll also probably use the screen up here, isolated passages
15 from the documents that are admitted in evidence to highlight
16 them for you.

17 All right. Will you swear in the witness, please.

18 THE DEPUTY CLERK: Please stand and raise your right
19 hand.

20 BETTI JOYCE LIDE,

21 called as a witness by the government,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. KWOK:

25 THE COURT: All right, please proceed, Mr. Kwok.

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862ZKAR3

Lide - direct

1 MR. KWOK: Thank you, your Honor.

2 Q. Good afternoon, Ms. Lide.

3 A. Hi.

4 Q. How are you employed?

5 A. I am with the National Institute of Standards and
6 Technology, part of the U.S. Department of Commerce.

7 Q. What is your position now in that?

8 A. I am now a physical scientist in the information technology
9 laboratory.

10 Q. What was your position before then?

11 A. I was with the advanced technology program serving as
12 program manager and the competitions manager.

13 Q. What is the advance technology program?

14 A. The advanced technology program is a funding agency, a
15 funding part of the National Institute of Standards and
16 Technology which helps U.S. industry perform research that is
17 too high risk for the industry to perform alone.

18 Q. You mentioned you were a competitions manager; what do you
19 do in that capacity?

20 A. As competitions manager, I oversaw the receipt of all of
21 the proposals to that program, and the evaluation of those
22 proposals leading to which ones would receive funding.

23 Q. Program manager, what did you do in that capacity?

24 A. As a program manager, I oversaw the technical
25 commercialization progress of each of the projects that I

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862ZKAR3 Lide - direct

1 managed.

2 THE COURT: What year are we talking about?

3 THE WITNESS: We -- I started with the advanced
4 technology program when it began in 1990, and I left it in
5 2005.

6 Q. Ms. Lide, who are the typical recipients of this advanced
7 technology program or ATP grant?

8 A. The recipients are U.S. industries, and they can partner or
9 subcontract to universities and non-profits.

10 Q. How competitive is the selection process?

11 A. It is a very competitive process.

12 Q. Can you give us a sense of how competitive it is?

13 A. Certainly. Most competitions see only about one in ten
14 proposals being given an award.

15 Q. And what is the amount of the grant awarded to each
16 successful applicant?

17 A. A single applicant can receive a total of \$2 million, and
18 that could be spread over anywhere from one to three years.

19 Q. And where does that money come from?

20 A. The money comes from the funds that the U.S. Congress gives
21 to the National Institute of Standards and Technology.

22 Q. How does that money get into the hands of the successful
23 applicant?

24 A. When the applicant is successful, that money is put into a
25 fund, basically, like a bank account, against which that

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1 applicant can draw.

2 Q. Now what, if anything, does the grant --

3 THE COURT: In whose is name is the bank account?

4 THE WITNESS: I'm sorry?

5 THE COURT: In whose name is the bank account?

6 THE WITNESS: The bank account is in the name of the
7 for profit company. Thank you.

8 THE COURT: The for profit company.

9 THE WITNESS: Correct. The money must flow to a
10 company that is for profit. It cannot flow, for example, to a
11 university.

12 Q. And what, if anything, does the grant recipient have to
13 contribute to the costs of the research?

14 A. A single applicant must pay all of the indirect costs and
15 can contribute to the direct costs.

16 Q. What are these direct versus indirect costs?

17 A. Direct costs are those funds that go directly to the
18 research, such as individual salaries or equipment needed to
19 perform that research.

20 Q. How about indirect costs?

21 A. Indirect costs are things that would be spread over all of
22 the activities of that company, such as facilities, rent,
23 electricity, legal fees, secretarial support, administrative
24 support, looking for other funding, that sort of thing.

25 Q. So if a grant has the cost shared requirement, where does

862ZKAR3 Lide - direct

1 the cost recipient pay the costs share amount to?

2 A. The recipient must pay his or her part of that cost share
3 directly to the expenses of the project. So if a big piece of
4 equipment was bought -- was purchased, the government would pay
5 its percentage and the recipient would pay its percentage.

6 Q. And what is the typical percentage of what the cost share
7 is?

8 A. In addition to the indirect costs, there is no typical
9 costs, but whatever percentage is put in the original proposal
10 must be adhered to for the life of the project.

11 Q. Now, what, if anything, governs how grantees can spend
12 award money that they get?

13 A. There are many documents outlining how awardees can spend
14 the money beginning with a kit it that the proposer gets when
15 he --

16 MR. RUBINSTEIN: Objection, your Honor. This is
17 hearsay.

18 THE COURT: Do we have the documents that --

19 MR. KWOK: Yes, I do.

20 THE COURT: Objection sustained. But this is
21 introductory, and the jury is instructed that they will be
22 guided by the documents themselves that deal with this
23 particular grant. This is more of a -- whatever you've been
24 hearing is not directly relevant to this grant.

25 BY MR. KWOK:

862ZKAR3

Lide - direct

1 Q. Let me just ask a general introductory question, if I may.
2 What is the general rule that governs how grantees can spend
3 their money?

4 A. They can spend money on the direct costs of the research.

5 Q. You mentioned earlier there's a budget. What obligations
6 do they have under the budget?

7 A. They must adhere to the budget under which they applied.

8 Q. Are there circumstances under which they can deviate from
9 that budget?

10 A. Yes. There are certain circumstances. 10 percent of the
11 annual amount that they are going to spend can be moved within
12 existing categories.

13 THE COURT: Is there any documentation to support
14 this?

15 MR. KWOK: Yes, I can introduce them now.

16 THE COURT: Otherwise, I don't think that's admissible
17 testimony.

18 MR. KWOK: Okay. May I approach?

19 THE COURT: Yes.

20 Q. Miss Lide, I'm handing you what's on top marked for
21 identification government Exhibit 1. And if you could also
22 look at actually government exhibits two, three and four as
23 well. Do you recognize these documents?

24 A. Yes, I do.

25 Q. How are you able to recognize them?

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862ZKAR3

Lide - direct

1 A. I helped prepare them, I used them, and they were given to
2 me as project manager.

3 Q. Were all of these documents prepared by someone with
4 knowledge of or made from information transmitted by persons
5 with knowledge of the information appearing on them?

6 A. Yes.

7 Q. And were these documents made at or near the time the
8 information contained in them became available?

9 A. Yes.

10 Q. Is it the regular practice of NIST or the ATP program to
11 prepare such documents?

12 A. Yes.

13 Q. And are these documents kept in the course of a regularly
14 conducted business activity?

15 A. Yes.

16 MR. KWOK: Government offers Exhibit one, two, three
17 and four.

18 THE COURT: Any objection, Mr. Rubinstein?

19 MR. RUBINSTEIN: Yes, your Honor. These are
20 multi-page documents that they just have a couple of pages on.

21 MR. KWOK: No. Can we approach, your Honor?

22 THE COURT: Let's take -- let's let the jury go, and
23 we'll deal with it because that will take time. It's after
24 4:00 o'clock. So I'll excuse the jury. Why don't you go to
25 the jury room with Mr. Monteagudo so he can give you the proper

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Lide - direct

1 instructions about how to get back here for 9:30 in the
2 morning. So the jury is excused until 9:30 in the morning.

3 (Jury exits the courtroom)

4 THE COURT: Watch your step.

5 (In open court; jury not present)

6 THE COURT: You want the witness to step out or --

7 MR. RUBINSTEIN: I don't have a problem because she
8 might be able to help us.

9 THE COURT: What?

10 MR. RUBINSTEIN: She might be helpful, Judge. My
11 concern is that it was my understanding these documents are
12 multi pages, and I'm taking a look at what the government has
13 given me, and it seems like they've extracted certain portions.

14 MR. KWOK: No, I think that's a misunderstanding. I
15 think Mr. Rubinstein's associate received the full set of the
16 government exhibits. What we handed out to the jury just now,
17 the jury binders only contain the set that we intend to publish
18 to them. So they do have a full set of the documents in their
19 entirety.

20 THE COURT: What is this? This first document is
21 called -- it's titled Advanced Technology program proposal
22 preparation kit.

23 MR. KWOK: That's correct, your Honor.

24 THE COURT: Is that complete?

25 MR. RUBINSTEIN: No, it's not complete, your Honor.

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1 It misrepresents what the document is.

2 THE COURT: That's what I'm asking.

3 MR. KWOK: No, the jury binders contain -- the jury
4 binders contain selected pages that we intends to publish on
5 the screen so they can follow along, but the exhibits that
6 would actually be introduced into evidence, that copy is the
7 complete copy. And we have also produced full sets of all the
8 documents that the government intends to introduce.

9 THE COURT: This is this document that you've just
10 handed me, which you said is not complete.

11 MR. KWOK: No, that is --

12 THE WITNESS: That is complete, sir.

13 MR. KWOK: That is a complete copy.

14 THE COURT: This is complete.

15 MR. KWOK: Exactly.

16 THE COURT: What you handed the jury is only selected
17 parts of that?

18 MR. KWOK: Only parts that we intend to put on the
19 screen and publish to them while they can follow along, that's
20 correct.

21 THE COURT: So, but government Exhibit 1 will be this
22 folder.

23 MR. KWOK: That's correct, your Honor.

24 THE COURT: This part will only contain those portions
25 of the folder, of the folder you believe are relevant to their

862ZKAR3

Lide - direct

1 consideration.

2 MR. KWOK: That's correct.

3 MR. RUBINSTEIN: Judge, I object to that. And I think
4 they could just as easily -- they want to publish certain pages
5 to the jury, I think that's fine. But I think it is misleading
6 to have in a binder two pieces of -- two pages of something
7 that is -- has significantly more pages. And I, that -- so I
8 don't have a problem if they give that document to the jury and
9 say we're referring to page so and so. But they're going to
10 offer one in evidence, I assume, not, not the extracted version
11 that they have in their binders.

12 THE COURT: Well, extracted is no different in pages,
13 as I understand it. It's -- they've merely got those sections
14 that they feel are relevant to -- for the jury's consideration
15 to demonstrate that there's certain, I suppose, agreements that
16 were made between the grantor and the grantee. But, so I'm
17 inclined to let them in evidence, but with instruction to the
18 jury that Exhibit 1, what they have is merely excerpts, what
19 they have in their books is merely an excerpt of government
20 exhibit one, if we're dealing with government Exhibit 1. I
21 presume there's a government Exhibit 2, and that is --

22 THE WITNESS: Would you like --

23 THE COURT: Government Exhibit 2 doesn't seem to have
24 the folder. What is it?

25 THE WITNESS: It is the general terms and conditions

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1 that, that the program used for all awardees.

2 THE COURT: And who receives a copy of this?

3 THE WITNESS: It's always available and it's with the
4 award document when it's given to the company.

5 THE COURT: What's the government Exhibit 3?

6 THE WITNESS: It's the financial assistance standards
7 terms and conditions. Here, again, it's always available.
8 It's on the website, but it's a part of each award that is
9 given to each recipient.

10 THE COURT: It's delivered to each grantee?

11 THE WITNESS: Yes, sir. Yes, sir. It's part of the
12 award document.

13 THE COURT: What's government exhibit 4?

14 THE WITNESS: Those are power point presentations that
15 we provide at what we call a kick off meeting. We meet with
16 each awardee right after the project starts. And exhibit 4 are
17 the slides that we used which go over once again rules,
18 regulations, reporting requirements, et cetera.

19 THE COURT: That are presented at that meeting?

20 THE WITNESS: Yes, sir.

21 THE COURT: Seems to me, as long as there's an
22 adequate and a clear statement made as regards each of these
23 matters that they -- each of the matters introduced in evidence
24 and their relationship to the marked document and their
25 exhibit, that it's admissible.

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Lide - direct

1 MR. RUBINSTEIN: Your Honor, I have no objection to
2 the exhibit. I have an objection to what the government is
3 giving to the jury. Because I submit that it's misleading to
4 the jury because a picture's worth a thousand words. If
5 they're going to take and they take these binders into the jury
6 room, when they go to deliberate they're going to see two
7 pages, and I submit that that's not the evidence. The evidence
8 is the entire --

9 THE COURT: All right.

10 MR. RUBINSTEIN: -- the entire exhibit.

11 THE COURT: That may be a good point in terms of what
12 goes into the jury room with them. But why aren't they allowed
13 to -- why isn't it fair for them to look at it, excerpts that
14 the government feels are required from each of the exhibits?
15 Actually the others are not excerpts. The others are -- the
16 other materials are not excerpts. It's only this first
17 exhibit, exhibit one.

18 MR. RUBINSTEIN: Judge, it's misleading. Somebody
19 looking at this thing would think that some -- someone picking
20 up this exhibit, we turn to this page, with this information is
21 posted and where -- if a reasonable person -- as a matter of
22 fact, it starts at page six.

23 THE COURT: I have it.

24 MR. RUBINSTEIN: I mean that's the first page is page
25 six.

862ZKAR3

Lide - direct

1 THE COURT: Well, I got -- that's not what I have. I
2 have the forward comes first.

3 MR. RUBINSTEIN: No, on Exhibit 1, your Honor.

4 MR. KWOK: I think your Honor has the full set of the
5 binders. With what the jury --

6 THE COURT: I don't have the binders. Are the binders
7 different than my -- the binders are different than what I
8 have? All right.

9 (Handing to the court)

10 THE COURT: I guess you better get -- I guess I didn't
11 get one of those. My government exhibits, I see where you're
12 saying, Mr. Rubinstein.

13 Well, what about that, Mr. Kwok? This doesn't seem --

14 MR. KWOK: No, your Honor.

15 THE COURT: How would you --

16 MR. KWOK: The reason we did it that way is because of
17 the bulkiness of some of the documents.

18 THE COURT: That isn't the issue, though. The issue
19 is whether there can be jury confusion.

20 MR. KWOK: No, because I believe when the jury returns
21 to the jury room, what is introduced into evidence will be, if
22 they request it or if the Court agrees, will be the documents
23 that they bring back to the jury room.

24 We have no problem with keeping the binders just here
25 in court so they can follow along while the paralegal shows the

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Lide - direct

1 pages on the screen and they can look down, without having to
2 flip through 100 pages of this book, 99 of which we do not
3 intend to show.

4 Similarly, for the bank records we did it for, to
5 conserve -- to, frankly, make it readable, instead of flipping
6 through 3,000 pages of bank records.

7 THE COURT: Well --

8 MR. KWOK: They can --

9 THE COURT: Then my instruction to the jury, as I
10 understand it, the reason for the Government's proceeding in
11 this way, Mr. Rubinstein, is that because the screen is the
12 other side of the courtroom, and sometimes it's hard to read
13 from the projector to the screen, that they're providing the --
14 wants to provide the jury with those pages that will be
15 projected on the screen. And if that's the case, then if I
16 instruct them that they are only to look at those exhibits when
17 they're projected on the screen; in other words, look at the
18 page of the exhibit that is in their books, which is being
19 projected on the screen, and that's all they're to look at,
20 that seems to me to be fair.

21 MR. RUBINSTEIN: I suggest, your Honor, if that's --

22 THE COURT: They would not go into the jury room and
23 need only be used because of the distance between the size of
24 this courtroom and the question about eyesight of people being
25 able to see it, whereas they can read right along and check it,

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Lide - direct

1 check the words if they are having difficulty reading what's up
2 on the screen.

3 MR. RUBINSTEIN: Well, why do they need the screen?
4 Why do they need the screen if they're giving, if they --

5 THE COURT: Well, some jurors would see it on the
6 screen and some jurors wouldn't.

7 MR. RUBINSTEIN: Judge, I think it just as easy if
8 they give them the whole document, as they apparently gave your
9 Honor and they said turn to page six, and they publish page six
10 on the screen. I mean, I don't see why -- people who are used
11 to handling documents, they see it in their mind a two page
12 item, and it's a ten page or 20 page item, there is a huge
13 difference. All right. And I think the jury has -- that it's
14 misleading to the jury to present it in this fashion. They
15 have the binder marked as government exhibits. They're not
16 government exhibits. They're extracts of government exhibits,
17 and they --

18 THE COURT: Well, maybe they should be marked
19 extracts.

20 MR. KWOK: We're happy to do that instead of saying
21 exhibits, we can put that word extract on top of every single
22 page. But the reason why we have the screen is so that they
23 can see which page we're talking about, and look at the
24 appropriate page in their binders.

25 THE COURT: Be sure they have the right page.

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Lide - direct

1 MR. KWOK: Exactly. And that's exactly right, your
2 Honor.

3 And with respect to Mr. Rubinstein, it's the
4 government's case and within reason I think we are allowed to
5 try the case the way we think that it would be most make sense
6 to the jury.

7 THE COURT: All I'm trying to do is be sure that what
8 you do is fair and that it's not -- I don't give a wrong
9 instruction to the jury, which I already have because I thought
10 they were the exhibits, and I'll clarify that in the morning.
11 I'll make it clear that they're extracts, and you better have
12 some mark that it's an extract. And I'll make the clear that
13 they're entitled to full exhibits in their deliberations, and
14 the jury binders won't go back with them. I think that seems
15 to me to be fair.

16 I don't see how that hurts you, Mr. Rubinstein. We'll
17 have to make those changes.

18 All right, is there anything else to take up?

19 MR. RUBINSTEIN: No, your Honor.

20 THE COURT: At least we cleared up one thing, we don't
21 have to do it tomorrow. It pays to go till 4:00 o'clock.
22 Okay.

23 MR. RUBINSTEIN: You went past 4:00, Judge.

24 THE COURT: What?

25 MR. RUBINSTEIN: We're on overtime.

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Lide - direct

1

THE COURT: Well, I know, but the jury -- it always

2

pays to get these things cleared up. At least we cleared it up

3

and wouldn't have a delay in the proceedings tomorrow.

4

All right, I have to go to other business, unless you

5

all need me for something.

6

MR. KWOK: Thank you, your Honor. Nothing further

7

from the government.

8

MR. EVERDELL: Thank you.

9

(Adjourned to June 3, 2008 at 9:30 a.m.)

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8637KAR1

1 UNITED STATES DISTRICT COURT

1 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, New York, N.Y.

3

4 v. S2 07 CR 541 (RPP)

4

5 DANIEL B. KARRON,

5

6 Defendant.

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7 -----x

7

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8 June 3, 2008

9 9:20 a.m.

9

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10 Before:

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11 HON. ROBERT P. PATTERSON, JR.,

12

12 District Judge

13

13

14 APPEARANCES

14

15

United States Attorney for the

16

Southern District of New York

16

BY: STEVEN KWOK

17

CHRISTIAN EVERDELL

17

Assistant United States Attorneys

18

18

RUBINSTEIN & COROZZO, LLP

19

Attorneys for Defendant

19

BY: RONALD RUBINSTEIN

20

20

Also Present: Rachel Ondrik, U.S. Dept. of Commerce

21

Kirk Yamatani, U.S. Dept. of Commerce

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8637KAR1

1 (Trial resumed; jury not present)

2 THE COURT: All right. Thank you for being on time
3 this morning. Let's make a practice of getting here at least
4 at 9:15 so that we don't hold the jury up if they're here at
5 9:30. Is there anything to take up this morning?

6 MR. KWOK: Yes, your Honor. There are just three
7 issues about which I want to briefly address the court. First,
8 I submitted a letter last night. I don't think we necessarily
9 need to take that up now.

10 THE COURT: We haven't got it. I haven't got it.

11 MR. KWOK: I have an extra copy, actually my only
12 copy. Do you want me to hand it up?

13 THE COURT: Well, I better read it.

14 I have read the government's letter. Is there any
15 comment?

16 MR. RUBINSTEIN: Yes, Judge. They are trying to
17 backdoor the fact that they don't have records. They brought a
18 case based upon records and inappropriate spending, and they
19 can't back it up with any evidence that is admissible in court,
20 so now they want to get in other testimony to suggest what
21 records they are talking about. They don't specify a
22 particular document, and they don't have any documents, from
23 what I understand, from this submission to support it, so I
24 think that it's inappropriate.

25 THE COURT: Well, I don't know what the situation is

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1 with respect to the documents. This letter really only deals
2 with the statements and actions of the defendant.

3 MR. RUBINSTEIN: Well, his statements are admissions
4 that he made if they're relevant. Their alleged observations
5 of him, that's what they're looking to --

6 THE COURT: Actions are admissible.

7 MR. RUBINSTEIN: Yes, as long as they don't talk about
8 the document. I mean there is no document that I know of that
9 they're referring to, so we don't really know. Actually I
10 think it should be kept out on the probative value on 403, your
11 Honor, because it is so confusing to the jury. Unfortunately
12 it won't be confusing to the jury, it will be misleading to the
13 jury for these witnesses to talk about unknown documents that
14 we don't know if there were proper changes that he was making,
15 improper changes. This is all speculation on their part. Can
16 they identify what specific document they are talking about?

17 THE COURT: Well, aren't they going to have entries
18 that they are talking about?

19 MR. RUBINSTEIN: That's the problem, I don't believe
20 they do. If they do, let the government tell you.

21 THE COURT: It may not be a document, but it may be
22 entries.

23 MR. RUBINSTEIN: That's fine. That's fine. Let them
24 address and let us know what entries they are talking about.

25 THE COURT: Well, I don't think they have to tell you

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1 what entries in advance that they are talking about, but the
2 testimony will have to relate to entries and showing
3 expenditures of some sort in order to prove that they were
4 improper expenditures. There has to be a document someplace, I
5 don't mean that it isn't on computer as opposed to a ledger,
6 but if that's the way the defense kept its books.

7 Mr. Kwok? Are you not going to offer any evidence
8 from computer records or --

9 MR. KWOK: Actually, to give your Honor background to
10 why this issue even arose, we do have a snapshot of this Quick
11 Books ledger that we have been talking about, but it's just
12 that, a snapshot.

13 THE COURT: What do you mean by a snapshot?

14 MR. KWOK: It is what the ledger looks like at a
15 particular point in time, just like if you were working on a
16 document, you save it, you print it out, that's what we have,
17 what we believe to be the final or close to final version that
18 one of the auditors looked at.

19 THE COURT: But don't you have anything to prove
20 expenditures?

21 MR. KWOK: On that ledger it shows a number of
22 expenses that were paid for using grant money that should not
23 have. But what we are really talking about --

24 THE COURT: Aren't you going to go beyond that at some
25 point in the trial and show that X, Y and Z supplier received

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1 payment of that?

2 MR. KWOK: Yes, your Honor. And the primary way we
3 are going to prove that is not actually through the ledgers, as
4 I've told Mr. Rubinstein numerous times. The way we are trying
5 to prove that is through the bank records, through independent
6 records that we got from third parties. So there can be no
7 dispute that there is some confusion about the books and it's
8 unclear what's going on, we are looking outside the company, to
9 look at vendors, to look at credit card statements, to look at
10 bank records. That's how we're going to establish that funds
11 were misapplied.

12 Now, I have been trying to work with Mr. Rubinstein to
13 get what he considers the accurate set of ledgers. We haven't
14 been able to come to any agreement, because he considers my
15 ledger that I provided to him to be incomplete or inaccurate or
16 could possibly be tampered with.

17 So, now that we are unlikely to come to an agreement
18 on what that ledger is going to look like, I submitted the
19 letter to this court because I believe that our witnesses can
20 testify just like any percipient witness can as to what they
21 observed. Simply because the topic of their testimony relates
22 to a document doesn't make their testimony hearsay.

23 THE COURT: That's right.

24 Mr. Rubinstein?

25 MR. RUBINSTEIN: Your Honor, I think you have to lay a

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1 foundation. Let's assume that what the witness is referring to
2 is an expense for lunch at a restaurant and this is what the
3 witness put in or suggests is a non-NIST expense. Right? If
4 they identify this expense, then I intend on cross-examination
5 to show them the backup to show that it was a NIST expense.

6 THE COURT: That it was a?

7 MR. RUBINSTEIN: That it was an appropriate expense.
8 Just because they say it wasn't appropriate, let's see the
9 expense. And then you will know whether he is changing
10 something because he is trying to cook the books.

11 THE COURT: Well, which way is the government to
12 proceed? Is it going to start with the snapshots of the
13 ledger, or is it going to start with the expenditures that were
14 made and then elicit the testimony about the ledger?

15 MR. KWOK: I think it's the latter. We are going to
16 introduce the government auditor very soon who is going to talk
17 about the bank records, basically the records I referred to
18 outside of the company, to show that funds were misapplied.

19 Then we are going to have another set of witnesses who
20 worked with the defendant in his company, who are going to tell
21 us that when they worked with him they would make certain
22 bookkeeping entries only to have them changed back time and
23 again into a grant expense when they have told him repeatedly
24 to stop doing that. We are not going to elicit any --

25 THE COURT: But aren't you going to elicit the

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1 expenditures first that you contend were improper?

2 MR. KWOK: Not precisely, your Honor. I don't intend
3 to elicit --

4 THE COURT: It's going to be hard for the jury to
5 understand the relevance of the testimony unless you do it that
6 way.

7 MR. KWOK: Well, we will talk about some of the
8 background as to what their understanding about the rules were
9 and the conversations they had on that subject with the
10 defendant, and then it will become relevant or it will be
11 become obvious why it's relevant that the defendant then went
12 against their repeated warnings to go back into the books to
13 change them. That's all we are trying to elicit.

14 THE COURT: You say that's all you're trying to
15 elicit. You're going to elicit the expenditures, are you not?
16 I mean the jury is going to have a hard time. Not all of these
17 jurors have a law degree or what have you. If they don't know
18 what the expenditures are, how are they going to be able to
19 evaluate the testimony about changing the books, etc.?

20 MR. KWOK: Well, I mean they are going to talk about
21 some examples as to the type of things that got changed, so
22 they are going to talk about some of the examples where you
23 make bookkeeping entries that the defendant then changed, and
24 then they are going to talk about, for example --

25 THE COURT: Well, those examples are going to have to

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1 relate to expenditures --

2 MR. KWOK: They will.

3 THE COURT: -- which were actually made.

4 MR. KWOK: They will. By that point in time when they
5 will testify, a record will already I believe have been made by
6 the government auditor that those were the types of things that
7 grant funds were misspent on, such as utilities, meals and so
8 forth, and they are going to relate back to those topics with
9 questions and answers.

10 THE COURT: You say the types of things. Don't they
11 have to be the exact things?

12 MR. KWOK: I don't believe they do, because the way we
13 establish that those exact things were misspent using grant
14 money is through our government auditor.

15 The other witnesses are going to show not so much that
16 those monies were in fact spent -- because we will have already
17 established that -- but to show the defendant's criminal intent
18 in making those types of expenses, that he knew that he wasn't
19 supposed to spend money that way, and because he tried to hide
20 it, that's how we're trying to establish criminal intent. We
21 don't have to establish line by line.

22 THE COURT: I know how you're trying to establish
23 criminal intent, but what I'm concerned about is whether it's
24 possible under the rules of evidence to present to the jury in
25 a manner in which they can understand the significance of the

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1 testimony of these inside employees at the time that this was
2 presented to them. It's just a matter of sequence.

3 MR. KWOK: I understand that, and it will be the
4 government's burden at summation to tie all the loose ends
5 together.

6 THE COURT: Well, I understand the summation, but
7 there is some benefit sometimes to having the jury not be
8 completely surprised in summation as to the way everything fits
9 together.

10 MR. KWOK: I understand, and I appreciate your Honor's
11 point, but we will do our best. I think when the testimony
12 comes out, it will be clear why we are eliciting that type of
13 testimony.

14 THE COURT: Well, I'm not going to interfere with your
15 manner of presentation. That's your manner of presentation.
16 But I am going to make rulings on evidence as the questions are
17 asked, and whether there is a foundation. Foundation, I have
18 found that for some reason attorneys in the U.S. attorney's
19 office don't always recognize the significance of, and I often
20 have to sustain for lack of proper foundation, and then you
21 have a problem. It's an objection that apparently has fallen
22 out of favor in some courtrooms, but it's one which is
23 perfectly valid.

24 MR. KWOK: Certainly, your Honor.

25 THE COURT: And that's what Mr. Rubinstein is

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1 basically saying, that the way you are approaching it, you need
2 to establish the proper foundation with testimony.

3 MR. KWOK: We will certainly try to establish the
4 proper foundation, but I want to make the argument that to the
5 extent --

6 THE COURT: Foundation shows relevance, and that's why
7 I have proceeded the other way myself. But you do whatever you
8 want. I want this case to go forward promptly and efficiently,
9 and you deal with the expenditures first and then you have a
10 foundation for those questions. When you don't, I don't know
11 how you're going to establish the foundation. You may be able
12 to.

13 MR. KWOK: Thank you, your Honor.

14 If I may just raise one quick other point. With
15 respect to the first witness, before we paused yesterday I
16 believe defense counsel objected on hearsay grounds. I just
17 want to make clear the scope of your Honor's ruling.

18 I might have neglected to ask a witness certain
19 foundational questions about whether she was personally
20 familiar with the rules and regulations of the program. If I
21 have asked that, I don't believe I'm bound by simply
22 introducing documents and have her read from those documents,
23 if she is going to explain the rules of the program that she
24 personally knows about.

25 THE COURT: Well, the better thing to do is to lay the

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1 foundation by having the rules of the program offered in
2 evidence, and then she can testify about them.

3 MR. KWOK: Very well, your Honor.

4 MR. RUBINSTEIN: Your Honor, we left actually with the
5 issue of what the binders contain, and that your Honor was
6 going to give an instruction to the jury.

7 THE COURT: I'm going to give them the instruction.

8 MR. RUBINSTEIN: Could I step out for a personal
9 matter, your Honor?

10 THE COURT: Sure. Maybe we all ought to. The jury --
11 apparently there is a hold-up on one of the subway lines. Six
12 jurors were not here at 9:30.

13 (Recess)

14 THE COURT: Counsel, Juror 8 is missing, Mr. Naveen.
15 I think we have to go ahead without him if he isn't here by 10
16 o'clock. I have about two minutes to ten. Or Naveen John I
17 guess his name is.

18 DEPUTY COURT CLERK: He's here.

19 THE COURT: OK.

20 (Continued on next page)

21
22
23
24
25

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1 (Jury present)

2 THE COURT: Please be seated. Good morning, ladies
3 and gentlemen. I'm sorry. I understand the subway, one of the
4 subway lines had a problem this morning. If it would do any
5 good, I would speak to the mayor about it, but I recognize it
6 wasn't your fault, but let's please be on time. I get the
7 lawyers here 15 minutes early so we can take up any matters
8 that need to be taken up before you get into the jury box.

9 Yesterday, I gave you some instruction, and I will
10 have to revise those instructions because I did not fully
11 comprehend how the government was going to proceed here.

12 The books you have in front of you contain excerpts of
13 the exhibits that they intend to offer at the time of trial,
14 and the excerpts are what they are going to show on the board
15 up here. However, for your convenience, because some people
16 may have difficulty in reading what's up on the screen, there
17 is an extra copy in the books. So, if you don't have any
18 difficulty reading what's up on the board, you don't have to
19 use the books. If on the other hand you find it difficult
20 reading what's up on the board because of the distance, then
21 you have freedom to look at the books and with respect to that
22 particular exhibit. So, don't look at other exhibits or
23 excerpts of exhibits unless they have been admitted into
24 evidence already.

25 All right. With that instruction, I think we're ready

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1 to go ahead.

2 MR. KWOK: Thank you, your Honor.

3 BETTI JOYCE LIDE, resumed.

4 THE COURT: Ms. Lide, you are reminded are you still
5 under oath, and the jury is instructed that any time a witness
6 takes the stand on a succeeding the day, the court as a matter
7 of court procedure must remind them that they are still under
8 oath. You are not to draw any inference from the fact that the
9 court reminded them they are still under oath. All right.

10 MR. KWOK: Thank you, your Honor.

11 Before we broke yesterday, the government offered
12 Government's Exhibits 1, 2, 3 and 4.

13 THE COURT: Let's identify what Government Exhibit 1
14 is.

15 MR. KWOK: Government Exhibit 1 is a proposal
16 preparation kit. Exhibit 2 marked for identification is --

17 THE COURT: Wait a minute. It's the proposal
18 preparation kit for the Advanced Technology Program.

19 MR. KWOK: That's correct, your Honor.

20 THE COURT: That's Exhibit 1. That's admitted in
21 evidence, the full exhibit.

22 (Government's Exhibit 1 received in evidence)

23 MR. RUBINSTEIN: Without objection.

24 THE COURT: Without objection.

25 MR. KWOK: And Government Exhibit 2 is the general

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1 terms and conditions, Advanced Technology Program.

2 THE COURT: All right. That is admitted in evidence
3 without objection.

4 (Government's Exhibit 2 received in evidence)

5 MR. RUBINSTEIN: That's correct.

6 MR. KWOK: Government Exhibit 3 is Department of
7 Commerce, financial assistance, standard terms and conditions.

8 THE COURT: That's admitted in evidence without
9 objection.

10 (Government's Exhibit 3 received in evidence)

11 MR. KWOK: Government Exhibit 4 is a slide
12 presentation. The first page is grants and agreements,
13 management division.

14 THE COURT: Of the Advanced Technology Program.

15 MR. KWOK: That's correct.

16 THE COURT: Exhibit 4 is admitted without objection.

17 (Government's Exhibit 4 received in evidence)

18 THE COURT: Go right ahead.

19 DIRECT EXAMINATION (Continued)

20 BY MR. KWOK:

21 Q. Ms. Lide, are you personally familiar with the rules and
22 regulations of the Advanced Technology Program?

23 A. Yes, I am.

24 Q. How is it that you are familiar with the rules and
25 regulations of that program?

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1 A. I helped develop some of the rules and regulations, and I
2 have followed them in all of the projects that I manage.

3 Q. What are a grantee's obligation under that program with
4 respect to their budget?

5 A. Their obligation is that they adhere to the budget and all
6 of the rules and regulations in these documents.

7 Q. Are there circumstances under which they can deviate from
8 the budget?

9 A. Yes, there are. For any given budget year, for the amount
10 of money allocated to that year, they can move up to 10 percent
11 from one category to another as long as those categories exist
12 in the budget.

13 Q. What if they want to move money that exceeds the 10 percent
14 annual budget amount?

15 A. They must ask for permission and get written prior approval
16 before the new budget is authorized.

17 Q. What if they want to add a new category altogether?

18 A. They must ask for permission and get written prior approval
19 before they add that category.

20 Q. Ms. Lide, are oral approvals ever given?

21 A. No.

22 Q. Are there situations where grantees can spend the money
23 first and seek approval after the fact?

24 A. It is the exception to the rule. That happens
25 occasionally, but when that happens, any of the money spent

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1 before the written approval is given is at the grantee's risk.

2 Q. Now, are there certain principles that dictate whether ATP
3 will pay for certain expenses or not?

4 A. Yes, there are, and those are all in these documents.

5 Q. What are some of those basic rules?

6 A. Basically ATP will not pay indirect costs for single
7 applicants, such as rent, facility renovations, legal fees,
8 administrative costs for secretaries and that sort of thing,
9 which is spread over the whole company's activities.

10 Q. And do you pay for expenses incurred before the start of
11 the grant program?

12 A. No, we call them sunk costs, and nothing incurred before
13 the actual start date of the project can be charged to the U.S.
14 government.

15 Q. How do grantees know about all of these rules that you just
16 described to us?

17 A. They know about these rules in these documents that are
18 exhibits 1 through 4 through conferences that we give, through
19 telephone advice that we always have available, and through a
20 kick-off meeting which is what is presented in Exhibit 4.

21 Q. What is a kick-off meeting?

22 A. A kick-off meeting is a meeting between the grantee and the
23 project management team at NIST where we go through all of the
24 rules and regulations, ask if there are any questions, and make
25 sure that the grantee understands the responsibilities of being

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1 good stewards of the government's money.

2 Q. When does this kick-off meeting typically happen?

3 A. Shortly after the start of the project, as soon as
4 possible, depending on circumstances. And before it occurs, we
5 are always available by telephone.

6 Q. How do you know that that's what happened at these
7 meetings?

8 A. I was there, I was part of the project management team, and
9 I participated in these meetings.

10 Q. Now, let's take a look at the exhibits I have introduced
11 into evidence just a moment ago one at a time. Let's take a
12 look at Government Exhibit 1.

13 Your Honor, may we publish that to the jury?

14 THE COURT: The excerpts?

15 MR. KWOK: Yes, to page 6.

16 THE COURT: All right. Government Exhibit 1 can be
17 published to the jury on the screen, and if you have difficulty
18 in reading that -- and I can understand why you would -- I
19 think you better take out your books and look at the excerpts.

20 Can it be blown up anymore, counsel? The paralegal
21 can't blow that up more?

22 MR. KWOK: I think we need the bottom part of the
23 page. I'm just directing Ms. Moussa to the bottom part of the
24 page.

25 THE COURT: The whole thing can't be blown up so they

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1 can read the whole thing on the board? You are using less than
2 half of the screen. You're still using less than one half of
3 the screen. You better get someone there who knows how to use
4 it.

5 Can't you do the whole thing?

6 MR. EVERDELL: Your Honor, I think this is as big as
7 it gets on the screen. I think this is as big as it gets on
8 the screen.

9 THE COURT: Why not show the whole page?

10 MR. EVERDELL: I think when you show the whole page,
11 it shrinks on the page. We can't show it any bigger than that.

12 THE COURT: You can do more.

13 MR. EVERDELL: I don't think so. That is why we have
14 the jury binders as well.

15 THE COURT: You need the jury binders. I have fair
16 eyesight, but the jury -- can all the jury read that, or does
17 everyone have my problem? I can't read it.

18 All right. I see some shaking their head saying they
19 can't read it. All right.

20 MR. EVERDELL: I believe Mr. Kwok was asking for a
21 specific part of the document, which can be blown up.

22 THE COURT: Sometimes we have smaller boxes for the
23 jury to watch. Are we going to have much more of these
24 documents in this case?

25 MR. EVERDELL: Yes, your Honor, we will.

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1 THE COURT: Why don't we call the people downstairs,
2 Joel, and he can set up individual screens -- not individual,
3 but one for every three or four jurors.

4 MR. EVERDELL: We can try that, your Honor, but we
5 also have the jury binders there so they can look at the paper
6 copy if they can't see the copy on the screen. The documents
7 are in the binders.

8 THE COURT: But the other difficulty is that usually
9 when you show these things on the board you have a laser or
10 something like that to point to the exact language that you are
11 trying to isolate. But, all right, all right. Proceed.

12 MR. KWOK: Thank you, your Honor.

13 BY MR. KWOK:

14 Q. Ms. Lide, directing your attention to page 6, paragraph 5,
15 can you just describe to us what that says?

16 A. Yes. That is describing some of the costs that are
17 unallowable under the Advanced Technology Program.

18 Q. What are some of those examples?

19 A. Some of them are the construction of new buildings or
20 renovations of existing laboratories, indirect costs, as we
21 have already discussed, profit management fees, interest,
22 facilities capital cost, if money, and that goes on to page 7
23 if you want more examples.

24 Q. What are those?

25 A. Such as bid and proposal costs -- which are examples of

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1 sunk costs which we discussed -- tuition, surveys,
2 commercialization studies and the like.

3 Q. I am showing you the next page. It's marked as --

4 THE COURT: Page 7?

5 THE WITNESS: 7, sorry.

6 MR. KWOK: Ms. Moussa, can we have the next page up?

7 THE COURT: Page 7 is up.

8 MR. KWOK: The next page in the jury binder.

9 THE COURT: Page 7 is the next page, I believe after
10 page 6.

11 MR. KWOK: I am referring to the next page in the jury
12 binder, your Honor. It's the instructions for form NIST 1262,
13 item K.

14 THE COURT: Sorry. I'm unable to follow you.

15 Page 6, and then there is page 7. You use the term
16 page 6, I presume you mean page 7 when you say the next page.
17 This does not seem to have a numbered page.

18 MR. KWOK: It does not have a numbered page, but it is
19 the next page in the jury binders.

20 MR. RUBINSTEIN: The extract, your Honor.

21 THE COURT: After 7?

22 MR. RUBINSTEIN: It's not the next page in Exhibit 1,
23 your Honor. It's the next page in what has been given to the
24 jury, the extracts of Exhibit 1.

25 MR. KWOK: If we could zoom in to item K.

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1 THE COURT: These are the instructions for form NIST.

2 MR. KWOK: 1262.

3 THE COURT: I see. All right.

4 Q. Miss Lide, can you tell us what that says.

5 A. Yes. Item K says that all of the indirect costs must be
6 absorbed by the proposer.

7 Q. And once again, what are indirect costs?

8 A. Indirect costs are those that you cannot clearly identify
9 with only this ATP project but rather are incurred by all of
10 the activities of that company.

11 Q. And when do you typically hand out this booklet that we are
12 just looking at?

13 A. This booklet is available the minute we announce a
14 competition. It is sent to thousands of people on our mailing
15 list. We hold conferences and we give it out there, and it is
16 electronically available on our website.

17 Q. Let's go to the next Government Exhibit, Government Exhibit
18 2.

19 THE COURT: Just so I understand, everything in
20 Exhibit 1 is sent to a proposed grantee, is that correct?

21 THE WITNESS: That is correct, sir, yes.

22 Q. Miss Lide, what is Government Exhibit 2?

23 A. This is the general terms and conditions of the Advanced
24 Technology Program.

25 Q. And when is this document given out?

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1 A. Once again it's available on the web. It's available by
2 anyone who requests it. It's discussed at the proposer's
3 conference, and it is part of the award that is made when the
4 company receives an award.

5 Q. Directing your attention to page 3 of that document --

6 THE COURT: When the company gets the award?

7 THE WITNESS: When the company gets the award, when
8 they get the document that says you are now a recipient, this
9 goes along with that.

10 THE COURT: Thank you.

11 Q. Zooming in on paragraph 9, up to the end of A.

12 Directing your attention to that paragraph --

13 MR. RUBINSTEIN: Excuse me. What page are you on?

14 MR. KWOK: Page 3 of Government Exhibit 2.

15 MR. RUBINSTEIN: Thank you.

16 Q. What does that paragraph say?

17 A. This paragraph is repeating what we said earlier, that we
18 need prior written approval for any change in the budget over
19 10 percent of the annual amount.

20 Q. And what does it say your obligations are if you create new
21 budget categories in the budget?

22 A. One must also get prior written approval to create a new
23 category.

24 Q. Let's go to section 12 of the same page titled equipment.
25 It also goes on to the next page, on page 4 of Government

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1 Exhibit 2. Can you just summarize for us what that paragraph
2 says?

3 MR. RUBINSTEIN: Judge, I'm going to object to the
4 summarizing. This is in evidence, and I submit that
5 summarizing is not adequate.

6 THE COURT: Well, could you read what that paragraph
7 says, Ms. Lide.

8 THE WITNESS: Certainly. "Upon expiration of the
9 project period, the recipient shall submit to the NIST grants
10 officer an inventory of equipment acquired with federal funds,
11 as prescribed in 15 CFR 14.34, along with an equipment
12 disposition certification."

13 Q. It goes on to the next page.

14 A. Right. "Consistent with the requirements of the government
15 performance" --

16 Q. Sorry, that's not the next page.

17 A. No. Continuing then, "The certification provides the
18 recipient an opportunity to request authorization to continue
19 to utilize the equipment for the purposes of the
20 commercialization initiative. If approved by the NIST grants
21 officer, the recipient shall report to NIST every two years the
22 condition of the equipment as long as the current market value
23 is more than \$5,000."

24 Q. What does that mean in plain English?

25 A. It basically means that the equipment is property of the

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1 U.S. government, and if approval is given in writing, the
2 recipient can continue to use it for the purposes of that
3 project as long as they continue to report every two years that
4 it's worth over \$5,000.

5 Q. What happens to the equipment if it falls below market
6 value of \$5,000?

7 A. It belongs to the company.

8 Q. That means they can keep it.

9 A. Right.

10 Q. Let's turn to the next exhibit, Government Exhibit 3.

11 THE COURT: Government Exhibit 3 is?

12 MR. KWOK: Department of Commerce, financial
13 assistance standard, terms and conditions.

14 Q. Ms. Lide, what is that document?

15 A. It is a Department of Commerce document with rules and
16 regulations for financial assistance, and again it is given to
17 every award that is made.

18 Q. Directing your attention to page 2, paragraph 4A and B, can
19 you explain to the jury what that means?

20 MR. RUBINSTEIN: I object again, your Honor to
21 explaining something where it hasn't been addressed first.

22 MR. KWOK: Your Honor, it's in evidence. The witness
23 has testified that she has personal knowledge of these rules
24 and regulations, and she regularly conducts these meetings as
25 part of her job and responsibility.

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1 THE COURT: Well, give the jury a chance to read the
2 document first. Then I will allow her to explain what it
3 means. But first the jury is instructed to read the document.

4 MR. KWOK: Thank you, your Honor.

5 May I proceed, your Honor?

6 THE COURT: All right.

7 Q. Now, Ms. Lide, now tell us what that means.

8 A. Part A is the instruction on how to suggest a change one
9 wants to make, and that is put in writing to the program
10 officer, the change in budget one wants. The program officer
11 reviews it and sends a recommendation to the grants office.
12 The second part, part B, is repeating that this must be done
13 for any percentage over 10 percent.

14 Q. Now, aside from handing out these documents that we just
15 looked at, what else do you do to make sure that grant
16 recipients understand the terms and conditions of the grant?

17 A. Once again, we do go over them at any proposer's
18 conference, which is an open meeting for anybody who wants to
19 apply, and we are very clear at that. But again once the grant
20 is made, these documents become part of the award package, and
21 we have this kick-off meeting I referred to, and we go over
22 these rules and regulations yet again.

23 Q. Let's now turn to Government Exhibit 4. What is that
24 document?

25 A. This is the Power Point presentation that was used for the

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1 kick-off meeting.

2 Q. Which particular program grant did you use this particular
3 slide show presentation?

4 A. The grant to Computer Aided Surgery, Incorporated, CASI.

5 Q. Directing your attention to pages 6 and 7 of that slide
6 presentation. Let's go to page 6 first. I will pause so
7 people can read it.

8 Ms. Lide, what are you trying to convey by this slide?

9 A. That in the course of this project all of the rules and
10 regulations listed here must be adhered to.

11 Q. Go to the next page.

12 THE COURT: Can you go back? So the special award
13 conditions are what?

14 THE WITNESS: They are part of the award document.
15 When the award is made, there can be special award conditions
16 such as you must hire someone with this expertise, or you must
17 have a business plan in 90 days, that sort of thing. They are
18 unique to each particular award.

19 THE COURT: And the ATP general terms and conditions
20 are what exhibit?

21 THE WITNESS: That was Exhibit 2.

22 THE COURT: And the Department of Commerce standard
23 terms and conditions, are they --

24 THE WITNESS: That was Exhibit 3.

25 THE COURT: And then what is 15 Code of Federal

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1 Regulations (CFR) part 14? Is that relevant here?

2 MR. KWOK: It may be at some point, your Honor, but
3 not right now.

4 THE COURT: And then the cost principles found in the
5 federal acquisition regulation part 31, is that --

6 MR. KWOK: Again, it's not relevant directly at this
7 point. I will ask the witness to explain the last item, ATP
8 audit guidelines.

9 Q. Ms. Lide, what is that?

10 A. Each project must undergo audits at specific intervals, and
11 for a three-year single company there is an audit after year
12 one and an audit after the project ends, and these are the
13 guidelines for the auditor to follow to make sure that the
14 project has followed the above federal rules and regulations.

15 THE COURT: Are those included in this Exhibit 4, the
16 audit guidelines, or does someone get them at the time of the
17 award?

18 MR. KWOK: It is part of Government Exhibit 4, the
19 whole set.

20 THE COURT: Part of Government Exhibit 4.

21 MR. RUBINSTEIN: What is that? I missed that, your
22 Honor.

23 THE COURT: I asked about the ATP audit guidelines,
24 and I don't want Mr. Kwok to testify, I want Ms. Lide to
25 testify. You are not a witness, Mr. Kwok.

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1 MR. KWOK: I understand.

2 THE WITNESS: These audit guidelines are available on
3 the website. They're given to each project, and we also have
4 a --

5 THE COURT: I understand on the website, but forget
6 the website for a second. They go to them.

7 Are they given to them at the time of the meeting?

8 THE WITNESS: No. I'm not sure if they are part of
9 the original award package. I would have to look that up.

10 THE COURT: Are they part of the ATP recipient
11 regulations package, responsibilities?

12 THE WITNESS: I would have to look up the cover page
13 of our award. I am not sure of that, sir.

14 MR. KWOK: We will come back to that.

15 THE COURT: I want to know whether it's clear at the
16 outset that they have to adhere to the audit guidelines.

17 MR. KWOK: Your Honor, I think we will go in sequence.
18 Right now I just want to establish the terms and conditions
19 that they have to abide by.

20 THE COURT: Well, that's one of the terms and
21 conditions. It says right up above. That's why I'm asking
22 about it.

23 THE WITNESS: Yes, sir, they are part of the original
24 award package.

25 Q. And where are you looking, Ms. Lide?

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8637KAR1

Lide - direct

1 A. I am looking at the cover page of the award that's given to
2 the recipient.

3 Q. Let's go to the next page of this slide show presentation.

4 What message are you trying to convey by that slide?

5 A. The slide is trying to convey the message that any change
6 of any significance to the research project must receive prior
7 written approval before it can be in effect.

8 (Continued on next page)

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863ZKAR2

Lide - direct

1 Q. Now, Ms. Lide, are you familiar with the term, fringe
2 benefits?

3 A. Yes.

4 Q. What does that term mean?

5 A. That term encompasses such things that we would normally
6 know as an employee getting --

7 MR. RUBINSTEIN: I object to that, your Honor.

8 THE COURT: I'm sorry?

9 MR. RUBINSTEIN: Is she an expert? She's --

10 THE COURT: She's the manager of the grants.

11 MR. KWOK: Let me lay some foundation, your Honor.

12 THE COURT: All right.

13 BY MR. KWOK:

14 Q. Ms. Lide, do you deal with rules and regulations dealing
15 how fringe benefits can be paid for using grant money as part
16 of your are day -- duty as a grant specialist?

17 A. As part of the project management team, I am tasked with
18 advising companies on what can and cannot be included in fringe
19 benefits.

20 Q. And so what does that term, as you understand it to mean?

21 A. It means things beyond the employee's salary, such as
22 health insurance and vacation time.

23 THE COURT: What can or cannot be.

24 THE WITNESS: It depends on what written policy the
25 company has, so.

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863ZKAR2

Lide - direct

1 Q. What are some of the basic rules governing whether fringe
2 benefits --

3 A. Well --

4 Q. -- can be paid for using ATP grant money?

5 MR. RUBINSTEIN: I object, your Honor, unless they
6 could point to some rules.

7 THE COURT: That's what we're asking, I think that's
8 what he's asking for.

9 Q. Ms. Lide, could you -- are there rules and regulations in
10 the ATP program governing whether grant money can be spent
11 using on fringe benefits, yes or no?

12 A. Yes there are. A company --

13 Q. What are those rules?

14 A. A company must --

15 MR. RUBINSTEIN: I object to hearsay. If there are
16 rules, what exhibit are they in?

17 MR. KWOK: Your Honor, the witness has just testified
18 that she has personal knowledge about these rules and
19 regulations governing fringe benefits.

20 THE COURT: I sustain the objection.

21 Where are the rules and regulations, Ms. Lide?

22 THE WITNESS: In the federal acquisition and
23 assistance terms and conditions.

24 THE COURT: And they're exhibit what?

25 THE WITNESS: Three.

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863ZKAR2

Lide - direct

1 THE COURT: Three?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay.

4 Q. So can you now tell us what those rules are?

5 MR. RUBINSTEIN: Judge, I'm going to object. Can we
6 go to Exhibit 3?

7 MR. KWOK: Exhibit 3 is in evidence.

8 MR. RUBINSTEIN: What page?

9 THE COURT: It's not, it's not in this excerpts, is
10 it? Is it in the excerpts, Mr. Kwok?

11 MR. KWOK: I do not believe so.

12 THE COURT: You'll have to refer to the actual
13 exhibit, Ms. Lide.

14 THE WITNESS: I'm sorry, I don't think it's in this
15 one. I think it's in that CFR numbered one. It's not in
16 Exhibit 3. It's in CFR --

17 Q. Let's turn to government Exhibit 4.

18 THE COURT: Which one?

19 MR. KWOK: Government Exhibit 4, page six.

20 THE COURT: Is that in the extracts or is it not?

21 MR. KWOK: It is in the extract. It's the bullet
22 point five.

23 Q. Ms. Lide --

24 THE COURT: I'm sorry.

25 MR. RUBINSTEIN: Excuse me.

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863ZKAR2

Lide - direct

1 THE COURT: Give me a chance to check this.

2 MR. RUBINSTEIN: My pages aren't numbered.

3 (Pause)

4 THE COURT: She says it's in the CFR, Mr. Kwok.

5 THE WITNESS: Yes. It's in item one, two, three, four
6 and five on that chart.

7 MR. RUBINSTEIN: If Mr. Kwok would --

8 THE COURT: What about -- where in those items is it?

9 BY MR. KWOK:

10 Q. Well, Ms. Lide, do you --

11 THE COURT: I'm sorry, I'm asking the question, Mr.
12 Kwok. I want it answered, all right.

13 THE WITNESS: I'm --

14 THE COURT: From the witness.

15 THE WITNESS: Yes, sir. I am the technical person on
16 this project, and I believe my colleague, who will be here
17 later, will be able to point to the exact part of that. She's
18 from our grants office and she knows those documents part by
19 part. So if you would allow me to defer to her, I believe I
20 would appreciate that.

21 THE COURT: Then I don't want to hear any testimony
22 about the regulations on benefit plans, at this time.

23 MR. KWOK: That's fine. We'll move on.

24 Q. Ms. Lide, did there come a time when you became involved in
25 a grant involving Dr. Daniel B. Karron?

863ZKAR2

Lide - direct

1 A. Yes.

2 Q. Do you see Dr. Karron in the courtroom here today?

3 A. Yes.

4 Q. Could you point him out and describe an article of clothing
5 he's wearing?

6 A. He's at the second table with the dark suit and glasses
7 and, let's see, long -- longer hair.

8 MR. KWOK: Your Honor --

9 MR. RUBINSTEIN: Judge, that's not fair.

10 A. Okay, behind a blue box.

11 THE COURT: All right.

12 MR. KWOK: Your Honor, may the record reflect that the
13 witness has identified the defendant?

14 THE COURT: The record will so indicate.

15 Q. Ms. Lide, how did you first meet the defendant?

16 A. I met the defendant at a kickoff meeting for a project that
17 was awarded to his company by the Advanced Technology Program.

18 Q. And what was the name of this company?

19 A. CASI, Computer Aided Surgery Incorporated.

20 Q. And, approximately, when did this meeting take place?

21 A. Early November of 2001.

22 Q. Where did this meeting take place?

23 A. At the National Institute of Standards and Technology.

24 Q. And where is that?

25 A. In Gaithersburg, Maryland.

863ZKAR2

Lide - direct

1 Q. Who attended this meeting on behalf of CASI?

2 A. Dr. Karron, Mr. Lee Gurfein, and Dr. Rick Satava.

3 Q. Now, what was your understanding as to the defendant's role
4 in Computer Aided Surgery, Inc.?

5 THE COURT: How do you spell that last name?

6 THE WITNESS: S-a-t-a-v-a.

7 THE COURT: Thank you.

8 THE WITNESS: Certainly.

9 A. The defendant's position in the company was both chief
10 technical officer and president.

11 Q. And you mentioned Lee Gurfein. Who is Lee Gurfein?

12 A. Lee Gurfein was participating as a business contact.

13 Q. How about Rick Satava, who was he?

14 A. Rick Satava was a clinical and technical consultant.

15 Q. And who attended the meeting on behalf of the ATP program,
16 on behalf of NIST?

17 A. Myself and two colleagues, Miss Jane Orthwein and Miss hope
18 Snowden.

19 Q. And who was Hope Snowden?

20 A. Hope Snowden represented the NIST grants office and was the
21 grants specialist for this award.

22 Q. How about Jane Orthwein?

23 A. Jane Orthwein was my partner in managing this from a
24 technical perspective. She was also part of the Advanced
25 Technology Program.

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863ZKAR2

Lide - direct

1 Q. What happened at this meeting?

2 A. As in -- we used Exhibit 4 that presentation, the slide
3 show. And as in all of our kickoff meetings, we allow the
4 recipient of the award time to give us any updates on the award
5 that happened since it was awarded. And then we go over those
6 slides asking if there are any questions on reporting
7 requirements, rules and regulations and other government
8 response.

9 Q. What if, any rules, about the program did you focus on in
10 your presentation?

11 A. Well, as you saw in the presentation, we focus on making it
12 very clear that the proposal is --

13 MR. RUBINSTEIN: Objection, your Honor.

14 THE COURT: Objection sustained. It's a conclusory
15 statement.

16 What was said at the meeting with regard to the rules
17 and regulations, not -- don't characterize it. Just say what
18 was said.

19 A. We reiterated the need to adhere to government rules and
20 regulations.

21 Q. And what are those rules that you mentioned?

22 A. The rules that we mentioned are part of the award document,
23 some of them in the exhibits, the need for prior approval among
24 them.

25 Q. And --

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863ZKAR2

Lide - direct

1 THE COURT: Prior approval.

2 THE WITNESS: For any major change.

3 THE COURT: Over 10 percent.

4 THE WITNESS: Over 10 percent of the budget or in key
5 personnel, and anything that would affect the technical aspect
6 of the project.

7 Q. What, if anything, did you discuss about direct versus
8 indirect costs?

9 THE COURT: About what, sir?

10 Q. Direct versus indirect costs?

11 A. We went over the fact that direct costs are paid by the
12 U.S. government, and any cost share that the proposer, proposed
13 indirect costs must be paid for by the proposer.

14 Q. What, if anything, was discussed about how grantee would
15 find out whether a request for more occasion, the budget would
16 be granted or denied?

17 A. The only way the request can be submitted to, whether it
18 was denied or approved is submitted in writing to the grant
19 recipient, from the grants officer at NIST.

20 THE COURT: What would be given -- the approval in
21 writing would be given to?

22 A. That is correct, the approval in writing is given to the
23 awards recipient in the form of an amendment to the award. The
24 original award is an award document, and then the first
25 approved change is amendment one, et cetera. And that's an

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Lide - direct

1 official document signed by the grants officer at NIST.

2 THE COURT: That would be Miss Snowden?

3 THE WITNESS: No. Actually it's Miss Snowden's boss
4 at the time, it was Miss Marilyn Goldstein.

5 Q. At the time the project was approved at CASI, did you have
6 an understanding as to where Dr. Karron would be carrying out
7 his research?

8 A. It was our understanding that office space was being looked
9 for in lower Manhattan, and that there was a possibility of
10 office space or lab space at CUNY or at the New York Medical
11 Center.

12 Q. And how did you learn this?

13 A. It was in the original proposal and it was discussed.

14 Q. Ms. Lide, I'm showing you what has been marked for
15 identification government exhibit exhibits 10, 10A, 10B, 11,
16 12, 13 and 14. Can you take a moment to look at these?

17 THE COURT: These are not in evidence yet.

18 MR. KWOK: No they're not. It's just for
19 identification.

20 THE COURT: The jury shouldn't look at them until such
21 time as they've been admitted in evidence. Just hold on. All
22 right. So we start with one document at a time Mr. Kwok.

23 THE WITNESS: Okay.

24 MR. KWOK: Sure, let's look at government exhibit 10.

25 THE COURT: Do you know what that is, Ms. Lide?

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863ZKAR2

Lide - direct

1 THE WITNESS: Yes, I do.

2 THE COURT: And what is it?

3 THE WITNESS: It is the first part of the proposal
4 submitted to the Advanced Technology by CASI.

5 MR. KWOK: Government offers government exhibit 10?

6 THE COURT: No objection?

7 MR. RUBINSTEIN: No objection, your Honor.

8 THE COURT: Government's exhibit 10 is admitted into
9 evidence.

10 (Government's Exhibit 10 received in evidence)

11 Q. Government exhibit 10A.

12 THE COURT: The jury can look at 10 then.

13 All right. 10A.? Ms. Lide, do you know what that is.

14 THE WITNESS: Yes, I do. It is a --

15 MR. RUBINSTEIN: Your Honor, excuse me.

16 THE COURT: I'm sorry.

17 MR. RUBINSTEIN: 10 is a number of pages, your Honor.
18 It's not just one page.

19 THE COURT: Yes, it's a number of pages. You know
20 what it is?

21 THE WITNESS: Well, this is, this is still 10 on the
22 board. Shall I say what 10A is? I'm sorry, sir.

23 THE COURT: I'm asking about 10.

24 THE WITNESS: 10A is the second part of the proposal
25 submitted by CASI to the Advanced Technology Program. That

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863ZKAR2 Lide - direct

1 year for the first time, to make it easier on proposers, we let
2 them propose in two parts. So they submitted the technical
3 plan first. If that passed, then we asked them for part two,
4 which is the commercialization plan. So this is the business
5 plan.

6 THE COURT: Is exhibit 10 the technical plan?

7 THE WITNESS: Yes, it is, sir.

8 THE COURT: And 10A is what?

9 THE WITNESS: Is how they will commercialize if the
10 technology is successful.

11 THE COURT: I see. What do you call the second part?

12 THE WITNESS: Well, we call it gate two proposal, but
13 the criteria are the commercialization criteria.

14 THE COURT: The commercialization criteria.

15 THE WITNESS: Yes, sir.

16 THE COURT: That's submitted by the proposed grantee.

17 THE WITNESS: Correct.

18 THE COURT: All right.

19 MR. KWOK: Government offers --

20 THE COURT: Any objection, Mr --

21 MR. RUBINSTEIN: No, your Honor.

22 THE COURT: 10A is then admitted in evidence.

23 (Government's Exhibit 10A received in evidence)

24 BY MR. KWOK:

25 Q. Ms. Lide, now take a look at government exhibit offered for

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Lide - direct

1 identification 10B. Do you know what that is?

2 A. Yes. That's a detailed budget, which is submitted as part
3 of gate two, which is the commercialization plan.

4 Q. And who submitted this document?

5 A. This is the document submitted as part of proposal from
6 CASI.

7 MR. KWOK: Government offers 10B.

8 THE COURT: 10B?

9 MR. RUBINSTEIN: No objection, your Honor.

10 THE COURT: Any objection? No objection. 10B is
11 admitted in evidence.

12 (Government's Exhibit 10B received in evidence)

13 THE COURT: This is, again, an application by CASI --
14 part of an application by CASI?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right.

17 BY MR. KWOK:

18 Q. Ms. Lide, now if you could look at next exhibit, government
19 exhibit 11 marked for identification. Do you know what that
20 is?

21 A. Yes. It is the cover letter congratulating Dr. Karron on
22 being the recipient of a ATP award, and it's signed by the
23 acting director of the advanced technology program, Mark
24 Stanley.

25 MR. KWOK: Government offers government exhibit 11?

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Lide - direct

1 THE COURT: What's the date of that?

2 THE WITNESS: Date is October -- I can't read it, but
3 I -- it's probably either one or four. We always make awards
4 basically the first of the government fiscal year.

5 THE COURT: And what year?

6 THE WITNESS: 19 -- 2001.

7 THE COURT: This is notice of award?

8 THE WITNESS: I'm sorry, sir?

9 THE COURT: It's a notice of award, is that --

10 THE WITNESS: Yes, that's correct. It's a cover
11 letter.

12 THE COURT: It's a cover letter.

13 THE WITNESS: Right, which --

14 THE COURT: That CASI has received an award?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right.

17 MR. KWOK: Government offers government exhibit 11?

18 MR. RUBINSTEIN: No objection, your Honor.

19 THE COURT: Exhibit 11 is admitted in evidence.

20 (Government's Exhibit 11 received in evidence)

21 Q. Now, let's take a look at government exhibit marked for
22 identification 12. Do you know what is that, Ms. Lide?

23 A. Yes, that is the cover from the grants office, office of
24 the financial assistance award, and it would be the next page
25 of what Dr. Karron received under the previous letter from Mark

863ZKAR2

Lide - direct

1 Stanley. This is the actual award document itself.

2 MR. KWOK: Government offers government exhibit 12.

3 THE COURT: Any objection?

4 MR. RUBINSTEIN: None, your Honor.

5 THE COURT: Government exhibit 12 is admitted in
6 evidence.

7 (Government's Exhibit 12 received in evidence)

8 Q. Now, let's look at the next document, Ms. Lide, government
9 exhibit marked for identification 13. Do you recognize that
10 is?

11 A. Yes.

12 Q. What is it?

13 A. It provides details about the award outlined in government
14 exhibit 12 giving contacts technical and administrative, both
15 for the company and from NIST and then describing funding
16 limitations for the three-year period, the first year
17 describing how to make changes and other requirements as
18 appropriate to this award.

19 BY MR. KWOK:

20 Q. Is this document part of a package you referred to earlier
21 that was sent to CASI?

22 A. Yes. This document would be the next two pages after
23 government exhibit 11 and 12, this would follow.

24 MR. KWOK: Government offers government exhibit 13.

25 MR. RUBINSTEIN: Without objection, your Honor.

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863ZKAR2

Lide - direct

1 THE COURT: No objection? All right. 13 is admitted
2 in evidence.

3 (Government's Exhibit 13 received in evidence)

4 Q. The next document, Ms. Lide, government exhibit 14, marked
5 for identification; do you recognize what that is?

6 A. Yes.

7 Q. What is it?

8 A. It is the summary budget that accompanied this proposal, so
9 it would be the budget of record when the project started.

10 Q. And who submitted this proposal?

11 A. CASI.

12 Q. And for what grants?

13 A. Computer Aided Surgery Incorporated.

14 Q. And what grants, what type of program?

15 A. I'm sorry. It was with the Advanced Technology Program.

16 MR. KWOK: Government offers government exhibit 14?

17 THE COURT: This accompanied 11, 12 and 13?

18 THE WITNESS: Yes, it does, sir.

19 THE COURT: All right, 14 is admitted in evidence.

20 (Government's Exhibit 14 received in evidence)

21 Q. Now, let's go back to government exhibit 12. Directing
22 your attention to the middle of the page, the block in bold,
23 can you read the second sentence in the bolded paragraph?

24 A. By signing the three documents, the recipient agrees to
25 comply with the award provisions checked below and attached.

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863ZKAR2

Lide - direct

1 THE COURT: I'm sorry, what -- it's government exhibit
2 12?

3 THE WITNESS: Yes, sir. It's name -- it's financial
4 assistance award.

5 THE COURT: Yes.

6 THE WITNESS: Okay. And I'm reading --

7 THE COURT: Where are you reading?

8 THE WITNESS: The bold -- the second sentence of bold
9 in the largest block on that page. The sentence starts at the
10 left margin, by signing.

11 Q. And what are these items checked below and attached?

12 A. The items checked below and attached outline all of the
13 rules and regulations which this grant must apply.

14 Q. Are those the same rules and conditions that you outlined a
15 moment ago?

16 A. Yes, they're the rules and conditions that are in previous
17 government exhibits and listed in exhibit with the power points
18 kickoff meeting slides.

19 THE COURT: The only ones that apply are the ones that
20 are marked with an X?

21 THE WITNESS: That is correct, sir.

22 THE COURT: Is the special award conditions, do you
23 know whether that was marked with an X or not. My copy has a
24 hole in it.

25 THE WITNESS: Yes, it is because this award had them,

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863ZKAR2 Lide - direct

1 as you saw, in exhibit 13.

2 THE COURT: All right.

3 Q. If we could go to the bottom of that page. What signature
4 appears in the box labeled, authorized recipient official?

5 A. D. B. Karron.

6 Q. What is the title?

7 A. President.

8 Q. What is the date?

9 A. 5 October, '01.

10 Q. Let's turn to government exhibit 13. Ms. Lide, what is
11 this document again?

12 A. These are special award conditions for this particular
13 grantee.

14 Q. If we could zoom in to the section of the form titled
15 funding limitations? What does that say?

16 A. It says that this is a three year project for \$2,000.
17 However, only \$800,000 are allocated.

18 Q. Ms. Lide, you said \$2,000?

19 A. Two million -- I apologize -- \$2 million award for three
20 years, but only 800,000 of that is allocated to the first year
21 budget period. And then it articulates that the recipient
22 shall submit in writing a revised budget and/or budget
23 narrative to the grants office for approval if other changes to
24 the budget are needed.

25 THE COURT: Where is that?

863ZKAR2

Lide - direct

1 THE WITNESS: Under the part that's underlined saying
2 October 1, 2001 through September 30, 2002. It says that if
3 there are results in changes to the budget or budget narrative
4 the recipient shall submit in writing a revised budget and/or
5 budget narrative to the grants officer for approval.

6 THE COURT: I just don't see where that is, what you
7 read from.

8 THE WITNESS: Okay, it's under the highlighted
9 October, underlined October 1, 2001, and it starts out, the
10 grants --

11 THE COURT: I'm sorry, just hold up because I'm not
12 familiar with these documents.

13 THE WITNESS: I'm sorry.

14 THE COURT: You are.

15 (Pause)

16 THE COURT: You are reading the grants officer may
17 require, is that --

18 THE WITNESS: Yes, sir.

19 THE COURT: Additional clarification to support
20 budget?

21 THE WITNESS: Correct.

22 THE COURT: If that results in changes to the budgets
23 or budget narrative, the recipient shall submit in writing a
24 revised budget for approval. All right.

25 THE WITNESS: Yes, sir.

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863ZKAR2

Lide - direct

1 Q. If we could go to the next page of this exhibit under
2 paragraph seven, cost share. Ms. Lide, what is the cost share
3 arrangement at CASI?

4 A. CASI, in the original proposal proposed a cost share -- and
5 this is outlined in item seven -- that NIST -- for direct costs
6 NIST would contribute 96.39 percent or \$800,000 and CASI's
7 share would be 3.61 percent or 30 -- \$30,000, and that's for
8 the first year.

9 Q. Do you know how much grant money awarded to CASI was
10 actually withdrawn?

11 A. Approximately \$1.3 million.

12 THE COURT: In the first year?

13 THE WITNESS: No, sir, over two years. Only 800 could
14 be withdrawn for the first year.

15 Q. Now, let's go to government exhibit 14. And what is this
16 document again, Ms. Lide?

17 A. This is the summary budget for the three years of the
18 project.

19 Q. Now, Ms. Lide, after the kickoff meeting, did you have any
20 further interactions with the defendant?

21 A. Yes. We had phone calls, visits, e-mails.

22 THE COURT: You, yourself?

23 THE WITNESS: Yes, sir.

24 Q. Could you describe your interaction with the defendant?

25 A. Certainly. As a member of the project management team, we

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Lide - direct

1 are always available for consultation, and that can be
2 face-to-face, that can be via e-mail, and that can be phone
3 calls. And in the case of this grant, all three occurred.

4 THE COURT: He asked for what your relationship was,
5 not what the team's relationship was.

6 THE WITNESS: I participated in all three of those. I
7 exchanged e-mails with Dr. Karron, I exchanged phone calls with
8 Dr. Karron, and I had face-to-face meetings with Dr. Karron.

9 Q. Who initiated these phone calls that you're referring to?

10 A. They can be initiated on either side, but usually the
11 recipient, Dr. Karron, initiated the contact.

12 Q. Why was he reaching out to NIST?

13 THE COURT: Objection sustained. You don't know why
14 he --

15 Q. What did he discuss when he called you?

16 A. Discussions had to do with perhaps changes in the
17 project -- not perhaps -- with changes in the project that he
18 would like to propose. Perhaps with -- not perhaps, sorry --
19 with meetings to which he would go and present a paper, the
20 possibility of coming to meet at NIST or us to go visit CASI,
21 any sort of activity in the day-to-day prong management.

22 Q. What type budget changes was he requesting?

23 A. Over the life of the project or early in the life, early in
24 the project?

25 Q. Early in the project.

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863ZKAR2 Lide - direct

1 A. Early in the project there were some minor changes to
2 basically personnel and equipment.

3 Q. And what, if anything, did you discuss with the defendant
4 about the topic of rent?

5 A. Rent is an unallowable cost. He --

6 THE COURT: No.

7 MR. RUBINSTEIN: Objection, your Honor. It's not
8 responsive.

9 THE COURT: What did you say to the defendant about
10 rent?

11 THE WITNESS: It is an unallowable cost.

12 THE COURT: That came up in the conversation?

13 THE WITNESS: Yes, sir, it did.

14 THE COURT: All right.

15 Q. Now, Ms. Lide, what difference would it have made if the
16 apartment was used, in part, as an office?

17 A. ATP does not pay rent, so it would make, make no
18 difference.

19 Q. Did you explain this to the defendant?

20 A. Yes.

21 Q. What, if any, was his response?

22 A. That in -- for this grants, there were unique circumstances
23 and it should be considered.

24 THE COURT: Can you tell us, approximately, when the
25 conversation took place?

863ZKAR2

Lide - direct

1 THE WITNESS: Very close to the beginning of the
2 project, certainly right after the beginning of the 2002.
3 That's the best of my recollection.

4 THE COURT: All right.

5 Q. And what did you say to him in response to that?

6 A. That ATP does not pay rent; it is an unallowable cost. He
7 could propose this to the grants officer and see what would
8 happen, but that it was -- it has never been done.

9 Q. What, if any, other categories did you discuss in your
10 conversations with the defendant?

11 A. One of the other major categories was renovations to the
12 existing space, because the computers were making the space
13 extremely hot, and we discussed improving that space with
14 additional electricity. And, once again, that is a capital
15 improvement, which ATP does not pay for.

16 Q. Did you tell that to the defendant?

17 A. Yes.

18 Q. What, if anything, did you talk about with the defendant
19 about the equipment?

20 A. Equipment must stay within the amount on this budget, and
21 any change in the amount of equipment needed, any changes in
22 major purchases would have to be approved in writing before
23 that could occur.

24 Q. And what, if anything, did you discuss with the defendant
25 about fringe benefits?

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1 THE COURT: I'm sorry, about what?

2 Q. Fringe benefits?

3 MR. RUBINSTEIN: Objection, your Honor.

4 THE COURT: Did you discuss anything about fringe
5 benefits?

6 THE WITNESS: Yes, we did.

7 THE COURT: When was that, about?

8 THE WITNESS: Approximately the same time.

9 THE COURT: All right.

10 Q. What did you tell the defendant?

11 A. That there must be a written policy for fringe benefits
12 that is adhered to for all projects of the company, and is an
13 industry standard, and all employees of the company must
14 receive the same fringe benefits.

15 Q. Can you unpack some of those terms, what do you mean when
16 you say, has to apply to all employees equally?

17 A. Well, once again, how we interpret fringe benefits,
18 according to the regulations that govern us, they're are things
19 like health insurance and vacation time, and perhaps tuition
20 assistance whatever. And one must have a written plan for what
21 one will give one's employees. All employees must receive the
22 same, and it must be consistent with what other companies in
23 your industry is providing.

24 Q. So what happens if the company does not have a written
25 plan?

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1 A. Then they will not be approved.

2 Q. What does that mean?

3 A. That ATP cannot accept those as an allowable cost.

4 Q. Now, aside from having these conversations with Dr. Karron
5 over the telephone, did you talk to him in person?

6 A. Yes, we did.

7 Q. How did that come about?

8 A. Since the kickoff had been at the National Institute of
9 Standards And technology in November, and that was at our
10 request, because that was right after September 11th and we --
11 government employees were not allowed to travel. So after the
12 first of the year we felt it important to visit the facilities
13 of this project, and also to have a discussion with Dr. Karron
14 about some of these changes and some of these conversations
15 that had occurred over the phone. So we requested a visit to
16 his company's facilities.

17 Q. Did you go, yourself, to this meeting?

18 A. I went myself with one other colleague from NIST, yes.

19 Q. And where did you go?

20 A. We went to Manhattan to CASI headquarters, which was on
21 East 33rd Street.

22 THE COURT: About when was this?

23 THE WITNESS: This was in May of 2002.

24 Q. And what was the building or establishment that you went
25 to?

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1 A. The building was an apartment building.

2 Q. And whose apartment was that?

3 A. It was Dr. Karron's apartment.

4 Q. What, if anything, did Dr. Karron say about why he was

5 doing research out of his apartment?

6 A. That attempts to get lab space in Lower Manhattan or at the

7 university facility had not yet come to fruition.

8 Q. And what did you observe when you went into that apartment?

9 A. I observed a room of largely computer equipment, and I

10 observed some individuals whose acquaintance I had not met

11 before that.

12 Q. And what, if anything, did Dr. Karron say about these

13 individuals that you had not met?

14 A. Well, as usual with site visits -- we call these site

15 visits -- and as usual with site visits we go around and

16 introduce ourselves. And Dr. Karron introduced these people as

17 having various responsibilities in CASI.

18 Q. What, if anything, about the budget did you discuss during

19 this visits?

20 A. We discussed proposed changes in equipment categories.

21 Also, since there were new people there, we asked for

22 justification of what those people were doing, whether they

23 were on ATP funds or not. Because, as we said, for them to be

24 working on our project, they need prior approval. So we

25 explained the need for a revised budget request and

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1 documentation to substantiate it.

2 Q. Did you have this conversation with Dr. Karron as well?

3 A. Yes.

4 Q. Now, Ms. Lide, was this the only site visits you made to
5 CASI?

6 A. No. That was in May of 2002, and the budget issues
7 continued over the summer, and so the project management team
8 felt it imperative to have a voice-to-voice conversation again
9 with Dr. Karron, and we paid another site visit in October of
10 2002.

11 Q. Now, for the other grants that you oversee, Ms. Lide, how
12 many site visits do you typically do?

13 A. The typical --

14 MR. RUBINSTEIN: Objection, your Honor, not relevant.

15 THE COURT: The objection's sustained.

16 Q. Ms. Lide, why did you go to this site visit for a second
17 time?

18 MR. RUBINSTEIN: Objection, your Honor.

19 THE COURT: Was there a reason?

20 THE WITNESS: Yes sir. I thought I articulated --

21 THE COURT: I thought she answered.

22 THE WITNESS: I will be happy to repeat it you want.

23 THE COURT: No, it's all right.

24 THE WITNESS: Okay.

25 Q. What did you hope to accomplish going back the second time?

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1 A. What we hoped to accomplish was to have a discussion to try
2 to iron out the budget differences, because that had become a
3 major issue in this grant, was to get a budget that the awardee
4 could live with, and yet met the government rules and
5 regulations.

6 By this time, if you remember the dates correctly, the
7 first year of the grants was over. So what we hoped to explain
8 to the recipient was by then it should not be an estimated
9 budget any more; he should be able to produce actual costs for
10 year one.

11 Q. Did you discuss this with Dr. Karron?

12 A. Yes. At that point we started requesting the actual
13 figures for the year one, what had actually been spent.

14 Q. And what, if anything else, did you discuss with the
15 defendant about the budget during this second site visit?

16 A. Typical issues were equipment and justification of who was
17 working on the project, personnel who was working as an
18 employee versus subcontract. We had trouble getting our hands
19 on that.

20 Q. And what did you tell Dr. Karron that he had to do?

21 A. Submit a revised budget with justification for the changes
22 in equipment and who was working on the project under ATP money
23 and in which category, subcontractors or employees.

24 Q. Now, aside from these two site visits, did you have other
25 in person meetings with the defendant?

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1 A. Yes. There was one, possibly two times that the defendant
2 came to NIST and we had discussions with him there.

3 Q. What did the defendant say about the purpose of the
4 meeting?

5 A. Once again, the budget was the big deal, to iron out the
6 budget was the main issue.

7 Q. And what did you discuss when you met?

8 THE COURT: When was this meeting, when was this
9 meeting?

10 THE WITNESS: The one meeting I remember distinctly,
11 sir, was in the summer of 2002 between my two site visits, so I
12 believe it would be July, if I remember correctly.

13 THE COURT: That was before the --

14 THE WITNESS: Before the second site visit.

15 THE COURT: Before the second site visit by your
16 staff --

17 THE WITNESS: That is correct.

18 THE COURT: -- and yourself.

19 THE WITNESS: Yes, sir.

20 Q. What, if anything, did you discuss?

21 A. The changes that were proposed and the need to document
22 them, justify them and get written approval before the project
23 could go forth with the new budget.

24 Q. And what, if anything, did you discuss relating to the
25 technical aspect of your project?

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1 A. We also tried to look ahead, because the project would need
2 some technical input and changes in year three because it was
3 going to use some human and animal subjects, and we suggested
4 that we start that process now because it was time consuming.

5 Q. And what did the defendant say about that?

6 THE COURT: This is in July?

7 THE WITNESS: Yes, sir. That was in July; yes, sir.

8 THE COURT: All right.

9 A. I was actually shocked, because instead of saying --

10 MR. RUBINSTEIN: Objection. I move to strike.

11 THE COURT: Objection sustained.

12 Q. What did the defendant say?

13 A. That no approval would be needed if he would just come and
14 schmooze and take us to lunch.

15 Q. Let's turn to government exhibit marked for identification
16 30. Ms. Lide, do you recognize this document?

17 A. Yes, I do.

18 Q. What is this document?

19 A. This is a document that the project management team sent to
20 the grants officer requesting a government audit of this
21 project.

22 Q. And which grants and company does this letter relate to?

23 A. The award to CASI.

24 MR. KWOK: Government offers government exhibit 30?

25 MR. RUBINSTEIN: I'm going to object, your Honor.

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1 THE COURT: You object to 30?

2 MR. RUBINSTEIN: Yes, your Honor.

3 THE COURT: Seems to me it's objectionable, Mr. Kwok.

4 BY MR. KWOK:

5 Q. Well, Ms. Lide, is this document kept in the course of a
6 regularly conducted business activity?

7 A. This would be the way in the Advanced Technology Program
8 that we would request an audit of a company.

9 Q. And was this document prepared by someone with knowledge
10 of -- transmitted by a person with knowledge of the information
11 containing within it?

12 A. Yes, this document is prepared by the ATP project
13 management team, including myself.

14 Q. And was this document prepared as soon as the information
15 contained within it became available?

16 A. Yes, it was.

17 MR. KWOK: Government offers exhibit 30.

18 MR. RUBINSTEIN: Objection, your Honor.

19 THE COURT: Is it -- is the document like this
20 prepared in the course of the agency's business?

21 THE WITNESS: Yes, sir, it is.

22 THE COURT: And is it the regular course of the
23 agency's business to keep these documents?

24 THE WITNESS: Yes. The Advanced Technology Program is
25 heavily audited and inspected, and we need documentation of our

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1 actions.

2 THE COURT: That seems to me it's admissible on those
3 grounds. But not it's not -- this has to do with an internal
4 communication in the agency, and it would be admissible on
5 those grounds, Mr. Rubinstein.

6 MR. RUBINSTEIN: I don't believe so, your Honor. I
7 stated my objection.

8 THE COURT: You want to tell me why not at sidebar?

9 I think the smart thing to do would be for the jury to
10 get a break at this point and come back while we have our
11 discussion and see if we can kill two birds with one stone, as
12 the expression goes.

13 (Jury exits the courtroom)

14 (In open court; jury not present)

15 THE COURT: Can the witness can step down, Mr.
16 Rubinstein?

17 MR. RUBINSTEIN: Pardon?

18 THE COURT: You want the witness to step down or not?

19 MR. RUBINSTEIN: Only if she needs a break. I don't
20 care if she's here.

21 THE COURT: You want a break?

22 THE WITNESS: Whatever is good for you.

23 THE COURT: Well, maybe you could explain to me why
24 you think I shouldn't admit this, if it's kept in the regular
25 course of business.

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1 MR. RUBINSTEIN: Yes, your Honor. Because under
2 403 --

3 THE COURT: What?

4 MR. RUBINSTEIN: I think when you balance it, they're
5 making all kinds of statements and findings here of five
6 versions of the actual --

7 THE COURT: You want an instruction to the jury of
8 some sort?

9 MR. RUBINSTEIN: Well --are they going to call another
10 witness, Judge, in relation to this?

11 THE COURT: I don't know.

12 MR. RUBINSTEIN: Because if they are, then maybe it
13 may be academic to press an objection.

14 THE COURT: This is a memorandum from Ms. Lide, who is
15 the witness.

16 MR. RUBINSTEIN: It's self-serving.

17 THE COURT: To the NIST grants officer through Miss
18 Sobolewski and Miss Cuthill, her supervisor, I gather.

19 THE WITNESS: Correct.

20 MR. RUBINSTEIN: It's self-serving, it's buttressing
21 what she's testifying to.

22 THE COURT: She hadn't testified to this part.

23 MR. RUBINSTEIN: She want to -- they're trying to
24 introduce it into evidence.

25 MR. KWOK: Your Honor, if I may, it's really a classic

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1 business record. It is made contemporaneously with the events
2 happening at around the same time.

3 THE COURT: It goes through a series of events. It
4 goes through five different budgets. It relates to five
5 different budgets.

6 MR. KWOK: It does, but the -- I guess the problem
7 this memo was trying to relate to was that the numbers in those
8 five different budgets were all different, and this memo was
9 prepared to note that problem when it became obvious to people
10 at NIST. And this witness is on the stand. She can be
11 cross-examined on it if defense counsel seems to think that
12 it's self serving, but it is admissible because the author of
13 this memo was Ms. Lide, who is the witness here.

14 MR. RUBINSTEIN: Judge that's why I feel exactly why
15 she shouldn't, because she's here to testify, and why buttress
16 her testimony with a document?

17 THE COURT: To show that she made a contemporaneous
18 report along those lines.

19 MR. KWOK: And if Ms. Lide wasn't the author of this
20 document, Mr. Rubinstein would object that the witness would
21 have no personal knowledge. So this is the classic type of
22 situation, it seems to me.

23 THE COURT: I think she should testify to it before
24 it's admitted in evidence, though. I think she should testify
25 to the exhibit in question.

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1 MR. KWOK: Very well, your Honor.

2 THE COURT: All right.

3 MR. RUBINSTEIN: Could we step out for a moment,
4 Judge?

5 THE COURT: Yeah.

6 MR. RUBINSTEIN: Thank you.

7 THE COURT: Let's step out and come back as soon as
8 possible.

9 MR. RUBINSTEIN: I shall, your Honor.

10 (Recess)

11 (Jury entering)

12 THE COURT: All right, please be seated. Let's
13 proceed now, Mr. Kwok.

14 MR. KWOK: Thank you, your Honor.

15 Q. Ms. Lide, if you could take a look at government exhibit
16 marked for identification 31?

17 THE COURT: Let's --

18 THE WITNESS: 31?

19 THE COURT: We're not past 30 yet. I haven't admitted
20 30.

21 MR. KWOK: I understand. I'm --

22 THE COURT: All right.

23 MR. KWOK: I think it would lay the foundation.

24 THE COURT: All right.

25 Q. Do you know what government exhibit marked for

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1 identification 31 is?

2 A. It's the cover page of a revised budget that was submitted
3 by the company CASI dated August 1, 2002.

4 MR. KWOK: Government offers government exhibit 31.

5 THE COURT: Any objection?

6 MR. RUBINSTEIN: None your Honor.

7 BY MR. KWOK:

8 Q. Let's turn --

9 THE COURT: 31 is admitted in evidence.

10 (Government's Exhibit 41 received in evidence)

11 Q. Ms. Lide, if you could --

12 MR. RUBINSTEIN: Your Honor --

13 THE COURT: I'm sorry, Mr. Rubinstein?

14 MR. RUBINSTEIN: I'm going to object, your Honor, that
15 it's not a complete document.

16 THE COURT: What?

17 MR. RUBINSTEIN: It's not a complete document.

18 THE COURT: Is it -- is this the budget that was
19 submitted, Ms. Lide, or is it --

20 THE WITNESS: Yes, this is the multi year budget and,
21 as such, is a document -- it does not contain the budget,
22 budget narrative, if -- but this is the budget that would
23 govern -- you know, if it were accepted, it would govern the
24 activities of the project.

25 THE COURT: So what is it accompanied by?

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1 THE WITNESS: In order to --

2 THE COURT: Is it a complete document or did he submit
3 other documents with it?

4 THE WITNESS: Along with this budget, we request the
5 narrative, which is a explanation of each of these line items
6 for each year, which is not in this folder.

7 THE COURT: All right. But that's, these -- these are
8 two documents, this is just the budget?

9 THE WITNESS: Correct.

10 THE COURT: All right, I'll allow 31.

11 (Government's Exhibit 31 received in evidence)

12 Q. Now, let's take a look at government exhibit marked for
13 identification 32. Do you recognize that document, Ms. Lide?

14 A. Yes.

15 Q. What is that?

16 A. It is another proposed budget submitted by CASI on October
17 20th.

18 MR. KWOK: Government offers government exhibit 32.

19 MR. RUBINSTEIN: Objection, your Honor. That -- it's
20 missing a narrative.

21 THE COURT: Same ruling, I'll allow it, these
22 documents exhibit, budgets, exhibit 32 is admitted in evidence.

23 (Government's Exhibit 32 received in evidence)

24 Q. Next document, Ms. Lide, government exhibit marked for
25 identification 33, do you know what that is?

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1 A. Yes. There are actually two documents in here. There's
2 the estimated multi year budget as submitted on December 2nd,
3 along with the budget narrative explaining all of the figures
4 on that budget.

5 MR. KWOK: Government offers government exhibit 33.

6 MR. RUBINSTEIN: No objection, your Honor.

7 THE COURT: Exhibit 33 is admitted in evidence.

8 (Government's Exhibit 33 received in evidence)

9 Q. The next document is marked for identification government
10 exhibit 34; do you know what it is, Ms. Lide?

11 A. Yes. It consists of three pieces, the first of which is
12 the e-mail transmitting another -- sorry -- another proposed
13 budget; the second page is the estimated budgets, and then the
14 rest of the page is, again consists of the budget narrative
15 describing all of the lines on the budget.

16 THE COURT: What date was this?

17 THE WITNESS: 12 -- this one was 12/20.

18 THE COURT: That's exhibit 33?

19 THE WITNESS: 34, sir.

20 THE COURT: What was the exhibit 33, when was that?

21 THE WITNESS: 12/2.

22 THE COURT: I see. Sorry.

23 THE WITNESS: It's confusing.

24 THE COURT: 34.

25 MR. KWOK: Government offers exhibit 34.

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Lide - direct

1 MR. RUBINSTEIN: No objection, your Honor.

2 THE COURT: No objection, to 34? All right.

3 (Government's Exhibit 34 received in evidence)

4 Q. Next document is marked for identification government
5 exhibit 35. Do you know -- do you recognize what that is?

6 A. Yes. Once again it consists of the transmission of another
7 budget, the budget itself and the narrative describing each
8 line item on the budget.

9 MR. KWOK: Government offers government exhibit 35?

10 THE COURT: That's --

11 THE WITNESS: 12/24.

12 THE COURT: 24, yes? 35 is admitted in evidence.

13 (Government's Exhibit 35 received in evidence)

14 Q. The last document is government exhibit 36. Do you
15 recognize what this is?

16 A. Yes, I do. It's a budget submission dated February 25th
17 '03, again two parts to it, the budget itself, and the
18 narrative describing each of the line items.

19 MR. KWOK: Government offers government exhibit 36.

20 MR. RUBINSTEIN: Without objection, your Honor.

21 THE COURT: All right, 36 is admitted in evidence.

22 (Government's Exhibit 36 received in evidence)

23 Q. Ms. Lide, what, if any, issues did you notice in receiving
24 these budgets from CASI and the defendant?

25 A. In analyzing these budgets, to recommend approval or not

863ZKAR2 Lide - direct

1 approval to the grants office, we recognized that in each of
2 the last four budgets, which should have reflected year one
3 actual costs, there were discrepancies.

4 Q. When you refer to year one actual costs, what exactly are
5 you referring to?

6 A. Well, during the course of the first year, one can estimate
7 that one is going to spend a certain amount of money. After
8 the year's over, one should have receipts and know exactly how
9 much one spent, so that's what we call actual costs.

10 THE COURT: When you say discrepancies, you mean one
11 from another?

12 THE WITNESS: Yes, sir. The last four where year one
13 should have been actual, because year one ended September 30th.
14 So after September 30th, a company knows exactly how much it
15 has spent in each category. And yet when we looked at these
16 budgets, the year ones had discrepancies in them.

17 THE COURT: You say there were discrepancies in the
18 last four. You mean exhibit 33, 34, 35 and 36?

19 THE WITNESS: There might be the last five. One,
20 two -- wait a minute, October 20, December 2nd, December 20th
21 and February 25th, so 32 -- sorry. 32 through 36, so that's
22 one, two, three, four, five, actually.

23 THE COURT: When was 32 submitted?

24 THE WITNESS: The date on 32 is October 20th of 2002.

25 THE COURT: I see.

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Lide - direct

1 Q. Ms. Lide, what, if any, document did you prepare to
2 document this issue?

3 A. Because we found it difficult to reconcile these budgets,
4 especially the actuals for year one, we were concerned that the
5 company was not able to account for government spending, and we
6 prepared a document for our supervisor to send to the grants
7 office requesting an audit.

8 Q. I'm now showing you government exhibit marked for
9 identification government exhibit 30.

10 MR. RUBINSTEIN: Your Honor, that's -- I don't believe
11 that's in evidence, your Honor.

12 THE COURT: It's not. He just said I'm showing it to
13 you.

14 MR. RUBINSTEIN: The jurors, your Honor --

15 THE COURT: We haven't -- it's not in evidence yet.
16 30 is not in evidence?

17 A. I'm sorry. Please go ahead. Your question.

18 Q. Do you recognize what that document is?

19 A. Yes, that's the request that I wrote with my partner
20 requesting an audit.

21 MR. KWOK: Government offers government exhibit 30?

22 MR. RUBINSTEIN: Objection, your Honor.

23 THE COURT: Objection overruled. Exhibit 30 is
24 admitted in evidence.

25 (Government's Exhibit 30 received in evidence)

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Lide - direct

1 Q. Ms. Lide, what was your purpose in sending this document?

2 MR. RUBINSTEIN: Objection, your Honor.

3 THE COURT: I think she's explained her purpose.

4 Q. Ms. Lide, why did the fact that the numbers were
5 inconsistent a concern to you?

6 MR. RUBINSTEIN: Objection, your Honor.

7 THE COURT: I will allow that question.

8 A. At that time, the company should have been able to give us
9 exactly what was spent for year one, and when it was unable to
10 do that over the course of five budgets, we were concerned, as
11 responsible government employees for the accounting of the
12 government funds to that project.

13 Q. Let's turn to page two of this exhibit, if you could zoom
14 in on the top. Ms. Lide, what is that table?

15 A. That is a table that we prepared summarizing the year one
16 costs from the five budgets submitted after year one, and they
17 are government exhibits 32 through 36.

18 Q. Can you just walk us through an example of how it shows the
19 what you just testified to?

20 A. Well, certainly. If you look at any one of the lines, for
21 example, equipment on 10/20, the company said it spent \$303,400
22 on equipment during year one, and that number changed on
23 December 2nd, and then changed again on December 20th. And
24 looking at any line item, there are many such changes.

25 Q. After you had noticed that, the inconsistency, did you

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1 speak to Dr. Karron?

2 A. I believe we spoke to Dr. Karron throughout the process. I
3 don't recall whether we spoke to Dr. Karron after the
4 February 25th budget or not on this issue.

5 Q. When you did speak to the defendant on this issue, what did
6 you tell him?

7 MR. RUBINSTEIN: Objection, your Honor. Could we fix
8 a --

9 THE COURT: Could we have a date, please?

10 MR. RUBINSTEIN: I think she said she doesn't recall
11 talking to him?

12 A. I do recall talking to him about year one actuals from the
13 period of October. In fact, when we visited in October, we
14 discussed that. Through the course of this submission of the
15 last budget in February, I do not recall if I had any further
16 conversations with him on this or not.

17 THE COURT: But it's your testimony that you did
18 discuss with him year one.

19 THE WITNESS: That we needed year one actuals,
20 correct.

21 THE COURT: And did you discuss with him the fact
22 there were discrepancies in these budgets?

23 THE WITNESS: Yes, sir.

24 THE COURT: After each budget was submitted?

25 THE WITNESS: Yes, which is one of the reasons we

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Lide - direct

1 requested a new budget with the requisite documentation that
2 would describe the actuals.

3 THE COURT: All right. Objection overruled. Go
4 ahead.

5 Q. Ms. Lide, did the defendant submit any amendments to the
6 plan that were approved?

7 A. Yes, he did.

8 Q. I'm showing you marked for identification government
9 exhibit 21. Do you recognize that document?

10 A. Yes, I do.

11 Q. What is it?

12 A. It is amendment number one, which means a change was
13 requested and approved, and this is written approval.

14 Q. And which grants -- and what company does this document
15 relate to?

16 A. This is the grant to CASI computer Aided Surgery
17 Incorporated, and this particular amendment changes the name of
18 the administrative contact.

19 MR. KWOK: Government offers exhibit 21?

20 THE COURT: What's the date on this?

21 THE WITNESS: The date is, it was signed by our grants
22 officer on October 24th, '01.

23 THE COURT: All right. Exhibit 21, there is no
24 objection to, 21 is admitted.

25 (Government's Exhibit 21 received in evidence)

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Lide - direct

1 BY MR. KWOK:

2 Q. Let's look at the next document marked for identification
3 Government Exhibit 22. Do you recognize what that document is?

4 A. Yes.

5 Q. What is it?

6 A. That is amendment 2, and the reasons for this amendment are
7 to revise the administrative contact's name, to correct total
8 estimated costs for the budget year, to incorporate a new
9 budget, to remove a special award condition, and to indicate
10 what is affected by these actions.

11 Q. What is the date on that document?

12 A. January 4th of 2002.

13 MR. KWOK: Government offers Government Exhibit 22.

14 MR. RUBINSTEIN: No objection, your Honor.

15 THE COURT: No objection?

16 MR. KWOK: Just stay with that document for a second.

17 THE COURT: Exhibit 22 is admitted into evidence.

18 (Government's Exhibit 22 received in evidence)

19 Q. You mentioned some changes to the budget. What was the
20 nature of the changes to the budget?

21 A. The nature of the changes are documented actually in this
22 amendment, as we always do. They were some minor changes in
23 personnel salaries and wages, minor changes in fringe benefits,
24 in travel and in equipment, and then it added a new line to the
25 budget as we discussed earlier. To add a new line one has to

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Lide - direct

1 get prior approval, and that line is material and supplies.

2 Q. Was that amendment approved?

3 A. Yes. When one gets a written amendment like this signed by
4 the grants officer it means that the changes are approved.

5 Q. Let's turn to the next document marked for identification,
6 Government Exhibit 23.

7 THE COURT: Could we go back one second? In this
8 document it says that the administrator is Elisha Gurfein.

9 THE WITNESS: Yes. Amendment number 1, sir, made Lee
10 Gurfein the administrative contact, and the company requested
11 that that name be formalized to instead of Lee, Elisha for the
12 first name.

13 THE COURT: All right.

14 Q. Looking at Government Exhibit marked for identification,
15 Government Exhibit 23 now, do you recognize that document?

16 A. Yes, I do.

17 Q. What is it?

18 A. It is amendment 3, and what it does is it allocates funding
19 for the second year of the project. If you remember, for the
20 first year I said that the project could expend \$800,000, and
21 what this does is it authorizes an additional expenditure for
22 the second year of another \$600,000.

23 Q. What is the date on this document?

24 A. 7/16/02.

25 MR. KWOK: Government offers Government Exhibit 23.

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Lide - direct

1 MR. RUBINSTEIN: No objection, your Honor.

2 THE COURT: 23 is admitted in evidence.

3 (Government's Exhibit 23 received in evidence.

4 Q. The next document is marked for identification as
5 Government Exhibit 24. Do you recognize this document?

6 A. Yes, I do.

7 Q. What is it?

8 A. It's amendment 4.

9 Q. What's the date?

10 A. 7/23/302.

11 Q. And what is the nature of this amendment?

12 A. The nature is to allow the recipient to use what we call
13 ASAP, which is Automated Standard Application for Payments,
14 which means one can withdraw on that bank account
15 electronically prior to the month in which the money is spent.

16 MR. KWOK: Government offers Government Exhibit 24.

17 MR. RUBINSTEIN: No objection, your Honor.

18 THE COURT: Government Exhibit 24 is admitted in
19 evidence.

20 (Government's Exhibit 24 received in evidence)

21 Q. The last document of the batch is Government Exhibit 25.
22 Do you recognize that document?

23 A. Yes, I do.

24 Q. What is it?

25 A. It is asking for a 60-day extension to when the first year

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1 audit should be completed.

2 Q. And what is the date?

3 A. 12/17/02.

4 MR. KWOK: The government offers Government Exhibit
5 25.

6 MR. RUBINSTEIN: No objection.

7 THE COURT: 25 is admitted.

8 (Government's Exhibit 25 received in evidence)

9 Q. Aside from amendment 2 which contains the budget changes
10 you testified about, do these other amendments that I just
11 showed you make any changes to the budget --

12 A. No.

13 Q. -- in terms of what the grant recipient can spend grant
14 money on?

15 A. No, with the exception that we did add year two money. It
16 was not a change in the recipient's budget, but we did make a
17 change that year two money could be extended.

18 Q. Aside from that, anything else?

19 A. No.

20 THE COURT: Year two money could be expended in year
21 one.

22 THE WITNESS: No, sir, starting October 1 in year two.
23 We would have to put the second year money in the system early
24 just because it takes time.

25 Q. Is that a routine type of amendment?

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1 A. Sorry. Which one? Putting year two in?

2 Q. Yes.

3 A. Yes, we usually put those second year monies in during the
4 summer months, even though it cannot be expended until after
5 the first year is completed.

6 Q. I am showing you what has been marked for identification
7 Government Exhibit 26. Do you recognize what that document is?

8 A. Yes, I do.

9 Q. What is it?

10 A. It is amendment 6, suspending effective immediately this
11 award.

12 Q. What is the date on that document?

13 A. June 27, 2003.

14 MR. KWOK: Government offers Government Exhibit 26.

15 MR. RUBINSTEIN: No objection.

16 THE COURT: 26 is received.

17 (Government's Exhibit 26 received in evidence)

18 Q. What was the reason?

19 A. The reason is not --

20 MR. RUBINSTEIN: Objection. I object to the question
21 the reason for the suspension.

22 THE COURT: I haven't heard the question yet.

23 Q. What was the reason for the suspension of the grant?

24 A. The reason --

25 THE COURT: Wait a minute. The exhibit we've got

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Lide - direct

1 here --

2 MR. KWOK: 26.

3 THE COURT: Well, I don't want this witness to give
4 her summary. If there is an official reason that's in the
5 document, she can read it.

6 THE WITNESS: With your permission, I will read it.

7 THE COURT: All right.

8 THE WITNESS: "This cooperative agreement is being
9 amended to suspend this award effective immediately for
10 noncompliance of special award 7."

11 BY MR. KWOK:

12 Q. If we could zoom in on that. And what is special award
13 number 7?

14 A. I will be happy to read it. "It's based on preliminary
15 audit information. You are in noncompliance of special award
16 condition 7, cost share."

17 Q. And what does that mean?

18 A. As we discussed earlier, this proposer proposed to share
19 the direct costs of the project. The government was going to
20 put in a little over 96 percent, and the proposer was going to
21 put in between 3 and 4 percent, and at this point our
22 preliminary information showed that the recipient had not given
23 his share of the direct costs.

24 Q. Ms. Lide, what if any involvement did you have with the
25 grant for CASI after the grant was suspended?

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Lide - direct

1 A. We continued to have e-mail and telephone exchanges because
2 CASI was eager to get the grant back in operation.

3 Q. What if anything did you tell the defendant about what he
4 needed to do to restart the grant?

5 A. Basically that he needed to make his part of the cost share
6 and work with the grants officer and grants office to make sure
7 that happened.

8 Q. What happened?

9 A. Nothing.

10 MR. KWOK: One moment, your Honor?

11 THE COURT: I'm sorry?

12 MR. KWOK: One moment.

13 No further questions.

14 THE COURT: All right. Cross-examination,
15 Mr. Rubinstein.

16 MR. RUBINSTEIN: Thank you, your Honor.

17 CROSS EXAMINATION

18 BY MR. RUBINSTEIN:

19 Q. Good morning, Ms. Lide.

20 A. Good morning.

21 Q. Now, when is the last time that you saw Dr. Karron before
22 coming to court here yesterday?

23 A. To the best of my knowledge, it would be when we made the
24 second site visit in October of 2002.

25 Q. And when were you contacted by the federal law enforcement

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1 authorities on this case?

2 A. That would have been spring of 2005, if I remember
3 correctly.

4 Q. Well, let me show you --

5 A. Either 2004 or 5.

6 Q. Did you review any documentation before you came here to
7 testify, Ms. Lide?

8 A. Yes, I did.

9 Q. And did you review notes of interviews with you?

10 A. An interview, no. I was requested to make some notes, but
11 it was not an interview.

12 Q. And did you prepare some notes?

13 A. Yes, I did.

14 Q. And did you submit that -- did you give those notes to
15 anybody?

16 A. Yes.

17 Q. And who did you give the notes to?

18 A. The special agent.

19 Q. And is that sometime shortly after you met the special
20 agent for the first time?

21 A. Yes.

22 Q. And is the special agent here in court?

23 A. Yes.

24 Q. And who is that special agent?

25 A. Rachel Ondrik.

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Lide - cross

1 Q. And did you title that report "administratively
2 restricted"?

3 A. Absolutely.

4 Q. And let me show you what's been marked as --

5 Does she have any of the 3500 material here?

6 THE COURT: I would be surprised if she does.

7 Q. Let me show you what has been marked as Government Exhibit
8 351-A and ask you if that is the report that you submitted to
9 the agent.

10 DEPUTY COURT CLERK: 3501-A?

11 MR. RUBINSTEIN: 3501-A, as in apple.

12 THE COURT: I don't know that she called it that. She
13 said they were notes, if I understood you.

14 THE WITNESS: Right. These were notes that I was
15 asked to prepare based on my recollection of this grant.

16 THE COURT: Who asked you to prepare them?

17 THE WITNESS: The special agent.

18 THE COURT: I see.

19 THE WITNESS: And now that I see the date on it, it
20 was not shortly after the first meeting.

21 Q. As a matter of fact, after you looked at this document,
22 does that refresh your recollection as to when you met this
23 special agent for the first time about this case?

24 A. No. To the best of my recollection, it was spring of '05.

25 Q. And when did you prepare -- at that meeting, were you asked

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Lide - cross

1 to prepare notes of your recollection of your involvement with
2 Dr. Karron and CASI, Inc.?

3 A. No.

4 Q. Did there come a time that you were asked to prepare notes?

5 A. Yes.

6 Q. And when was that?

7 A. That was shortly before those notes were prepared.

8 Q. So, you met the agent a second time?

9 A. The first time, the agent requested that we have no more
10 contact with Dr. Karron.

11 Q. And did the agent discuss the case with you on the first
12 occasion?

13 A. No, it was all communication should go through the special
14 agent.

15 Q. Did you prepare any notes after you met with the special
16 agent?

17 A. The first time?

18 Q. Yes.

19 A. No, sir.

20 Q. And you prepared notes. Did you use anything to refresh
21 your recollection to prepare the notes that you subsequently
22 gave to the agent?

23 A. We keep project management files which are extremely useful
24 as historical documents.

25 THE COURT: And those were used to prepare these

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Lide - cross

1 notes?

2 THE WITNESS: Yes, they are kept in a secure place and
3 accessible with a need to know.

4 Q. So, you have a whole file on CASI, correct?

5 A. I do not, no, sir; the Advanced Technology Program does.

6 Q. You are part of NIST though, are you not?

7 A. I am part of NIST, that is correct.

8 Q. And the Advanced Technology Program is a program that is
9 supervised by NIST.

10 A. That is correct, but I'm no longer with that program.

11 Q. But there are a number of documents, are you telling us,
12 related to the CASI involvement with the NIST ATP project
13 that --

14 A. There is the project file, correct.

15 Q. And how voluminous would you say that project file is?

16 A. In the Advanced Technology Program secure site where its
17 documents are held, it's probably two feet long. The official
18 file resides in our grants office though, and I don't know how
19 large theirs is.

20 Q. You have never seen that?

21 A. I have seen it. I have no clue how large it is.

22 Q. Have you seen it in preparation for your testimony here on
23 this trial?

24 A. Have I seen any preparation by whom?

25 Q. No. Have you seen that file?

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Lide - cross

1 A. The grants file?

2 Q. Right.

3 A. No, sir. No, sir.

4 Q. Now you prepared this memorandum on June 27, 2006, correct?

5 A. Correct.

6 Q. And did you go back to your secure file to refresh your
7 recollection as to events that occurred?

8 MR. KWOK: Objection. Asked and answered.

9 THE COURT: Objection overruled. I will allow the
10 question. That's not really a proper objection. It can be
11 if --

12 A. What's documented in the document he has, I did not need to
13 go back to the complete file. They were highlighted in my
14 memory.

15 Q. And did you review this document before you came here to
16 testify?

17 A. A while ago, yes, sir.

18 Q. When you say a while ago, how long ago was that?

19 A. Two months.

20 Q. And was that when you met -- withdrawn.

21 Did you meet the members of the prosecution team in
22 this -- when did you meet the members of the prosecution team
23 for the first time in this case?

24 A. About two months ago, if I remember correctly.

25 Q. And that was back in April 21, 2008?

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Lide - cross

1 A. Approximately.

2 Q. And between the time that you submitted the memorandum to
3 the agent in 2006 until 2008, did you have any contact with
4 anybody in law enforcement related to this case?

5 A. Not that I can remember.

6 Q. Do you make notes of your meetings with Dr. Karron? Did
7 you make any notes at the time that you met with Dr. Karron?

8 A. Formal meetings such as site visits, there are some notes.
9 Informal meetings in the NIST cafeteria or phone calls are
10 documented basically just by e-mails.

11 Q. And do you have with you the notations of any notes of the
12 formal meetings that you had? Are you talking about the two
13 site visits?

14 A. Correct.

15 Q. And you are also talking about the original meeting with
16 the slide presentation?

17 A. Right. But the slide presentation is our notes for that.

18 Q. All right. So your slide presentation and the notes for
19 the first meeting with Dr. Karron, correct?

20 A. Correct.

21 Q. You are familiar with Mark Stanley, are you not?

22 A. Yes, I am.

23 Q. And who is Mark Stanley?

24 A. He is currently the director of the Advanced Technology
25 Program.

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Lide - cross

1 Q. And back in 2001 was he in fact the director of the
2 Advanced Technology Program, ATP?

3 A. He was the acting director.

4 Q. All right. And you would have seminars, would you not,
5 with respect to grant applicants?

6 A. We had what we call proposers conferences for people who
7 wanted to apply.

8 Q. And do you know a Linda Beth Shelling?

9 A. Yes.

10 Q. Who is she?

11 A. She is currently -- well, they just reorganized. She is a
12 division director in the Advanced Technology Program.

13 Q. And back in 2000, 2001, what was her title?

14 A. To the best of my knowledge, she was a division director
15 then of what was called the biology and chemistry division. I
16 forget the exact title of it.

17 Q. And do you know a person by the name of Stephanie Ship?

18 A. Yes, I do.

19 Q. And who is Stephanie ship?

20 A. She is on a leave of absence. Her position of record is
21 the director of the economic assessment office in the Advanced
22 Technology Program.

23 Q. And what was her position back in 2000/2001?

24 A. That's what it was then.

25 Q. And what about Barbara Landis?

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Lide - cross

1 A. Barbara Lambis?

2 Q. Lambis, correct. Thank you.

3 A. She is like a special assistant to the director and a
4 liaison to the grants office.

5 Q. And is it fair to say that these people, Mark Stanley and
6 the three ladies that I mentioned, they would make
7 presentations to potential grant applications?

8 A. Certainly. They work as are our professional staff did.
9 We wanted to get the word out as broadly as possible, so all
10 professional staff were encouraged to make such presentations.

11 Q. And did you ever participate in such a presentation?

12 A. I did.

13 Q. Do you know whether or not Dr. Karron attended a
14 participation of that kind?

15 THE COURT: What date? Attended what? I'm not quite
16 sure.

17 Q. A conference with Mark Stanley and other directors of the
18 ATP program in 2001.

19 A. We keep attendance -- we ask for registration only to see
20 the size room we need, and we don't keep attendance lists, so I
21 could not be sure of that.

22 Q. Is it fair to say that in 2001 your agency distributed
23 about \$60 million in new awards?

24 A. That's the -- I don't know exactly, but that is the usual
25 amount that we distributed, so, yes, sir, I think that's a fair

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Lide - cross

1 assessment.

2 Q. And what is the maximum award that is permitted by ATP?

3 A. For a single company, it is \$2 million over three years,
4 and thus many companies divide it equally, you know, roughly 6
5 or \$700,000 a year, but they could just as well apply for one
6 million a year for two years.

7 Q. And it's fair to say that a number of the companies that
8 apply are small companies?

9 A. All sized companies apply. A good percentage of awards do
10 go to small companies.

11 Q. Now, is CASI considered a small company?

12 A. Yes.

13 Q. And what would be -- how would you classify a small company
14 from a larger company?

15 A. Well, we actually use the general practice of 500 employees
16 or less.

17 Q. And you do give grants to large companies, correct?

18 A. Yes. I'd like to clarify that the Advanced Technology
19 Program does not today exist, so to be actually accurate it
20 would be it did give grants to large companies.

21 Q. Does it exist with a different name?

22 A. No. There is a new program there, but it is not the same
23 as the Advanced Technology Program just with a different name.

24 Q. The administration, the present administration is taking
25 away scientific research in different areas, correct?

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Lide - cross

1 A. Who is, sir?

2 Q. The current administration of the government.

3 A. Oh.

4 MR. KWOK: Objection. Relevance.

5 THE COURT: Objection sustained.

6 Q. What percentage of people who receive grants are successful
7 in developing technology?

8 A. A very large percentage. I would give an estimate of -- do
9 I need to give an estimate? If you would like one, I would say
10 80 to 90 percent.

11 Q. Would you agree or disagree with Mark Stanley if he said
12 there were 40 percent?

13 A. I think it's a definition of what is a successful
14 technology. My answer was if the technology research is
15 successful. Mark is speaking for the program. The program
16 does not think of the project as a success unless not only the
17 technology is developed but it also reaches product in the
18 marketplace. I think that's the discrepancy in our
19 percentages.

20 Q. And is this all government money that goes into these
21 grants?

22 A. Except for the cost share requirements.

23 Q. Well, isn't it a fact that private industry contributes to
24 the fund?

25 A. And that's why I said except for cost share, yes, sir.

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Lide - cross

- 1 Q. Cost share is a figure given by a recipient like Dr.
2 Karron. He had a cost share portion, correct?
3 A. Um-hum.
4 Q. Of about 5 percent.
5 A. Correct.
6 Q. Right?
7 A. Yes.
8 Q. But isn't it a fact that industry itself donates to this
9 ATP project?
10 A. Industry must contribute to the project, as Dr. Karron
11 contributed independent costs and cost share. But the pot of
12 money, the 60 million that we give away, is totally government
13 funds.
14 Q. And the money that you give away, where do you put the
15 \$800,000 that Dr. Karron was entitled to the first year of the
16 grant?
17 A. In a bank account against which Dr. Karron can draw through
18 this program described as ASAP.
19 Q. So that once the grant is approved, \$800,000 is deposited
20 into an account, correct?
21 A. Correct.
22 Q. And this grant was approved October 1, 2001, correct?
23 A. Correct.
24 Q. Between October 1, 2001, when was money actually available
25 to CASI?

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Lide - cross

1 A. I don't recall. I thought the first draw-down was within
2 the first month or two.

3 Q. And the costs that are acquired by in this case CASI before
4 the money is available is borne by who?

5 A. It depends on whether the start date of the project had
6 occurred or not. If the start date of the project was October
7 4, whatever the date on that financial award assistance, then
8 no money of the government could be spent before that date.

9 Q. In this case the start date in fact was October 1, was it
10 not?

11 THE COURT: Do you have to look at an exhibit? The
12 award is exhibit number --

13 THE WITNESS: It was signed by Dr. CASI on October 5.

14 THE COURT: By doctor who?

15 THE WITNESS: Sorry, by Dr. Karron. I'm sorry. It's
16 Exhibit 12.

17 THE COURT: Exhibit 12. And that's the start date?

18 THE WITNESS: Actually, no. I guess if you look at
19 the award period near the top it says the award period is
20 October 1st.

21 Q. It's fair to say that as soon as the money became
22 available, within a month or two months, Dr. Karron could have
23 withdrawn \$800,000.

24 A. As long as it was -- well, one must account for the budget
25 month by month.

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Lide - cross

1 Q. Well, but in the first month if he took down \$800,000, at
2 the end of the month he would account that he took \$800,000,
3 correct?

4 A. He would have to account how he spent that \$800 in that
5 month.

6 THE COURT: 800,000.

7 THE WITNESS: I'm sorry. Yes, 800,000. My checkbook
8 is a little different.

9 Q. But the bottom line is that under this, he didn't need any
10 cosignature from anybody at ATP, correct? Nobody had to
11 approve any monies before what you call draw-downs, is that
12 right? Is that the terminology you use?

13 A. My grants partner would know that better than I, but that's
14 a fair term.

15 THE COURT: What's the answer to the question?

16 MR. RUBINSTEIN: Pardon.

17 THE COURT: What was the question?

18 MR. RUBINSTEIN: The question is that there are no
19 restrictions on how much of the \$800,000.

20 THE COURT: That was your statement, but I didn't
21 understand that to be your question.

22 Q. Are there any -- at the time a person, for instance Dr.
23 Karron or somebody working at CASI -- once the funds are
24 available, the \$800,000 for year one, October 1, 2001 to
25 September 30, 2002, is available on day one that the money is

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Lide - cross

1 deposited. It's not deposited in increments, correct?

2 A. That is correct.

3 Q. And is there any restriction on who working for CASI has
4 the authority to have monies transferred from this account to
5 the CASI corporation?

6 A. It has to be a duly recognized officer of that corporation.

7 THE COURT: Can they take the whole \$800,000 in the
8 first month? That's what he is asking.

9 THE WITNESS: It's highly unusual. If they take it in
10 the first month, at the end of the first month they have to
11 justify how much of that was spent on ATP, and anything that
12 was not spent on ATP reverts -- has to be returned to that bank
13 account.

14 So, I find it hard to believe -- you know, if you look
15 at a year where X people are getting salaries month by month, I
16 find it hard to believe that they could get their whole yearly
17 salary in the first month.

18 Q. Now, isn't it a fact that Dr. Karron was advised that this
19 grant was approved prior to the October date that you told us
20 in Exhibit 12?

21 A. I would have no knowledge of that. In fact, it's against
22 ATP policy to advise that before the actual award announcement
23 is made to the public.

24 Q. So you have no knowledge whether or not Dr. Karron was
25 aware that he received a grant prior to October of 2001. Is

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1 that your testimony?

2 A. Well, Marilyn Goldstein's document -- which again is
3 Exhibit 12, if I remember correctly -- is dated 9/29/01, and
4 once she signs it, they're Fed Exed out. So it could be that
5 he received it on 9/30. But as a project manager, that's not
6 in my area or was not in my area of responsibility.

7 Q. Isn't it a fact, ma'am, that pre-contract costs are
8 permitted under the grant?

9 A. No.

10 Q. Are you familiar with 48 CFR? Are you familiar with that?

11 A. No, I'm not.

12 Q. You're familiar, are you not, with 15 --

13 THE COURT: CFR --

14 MR. RUBINSTEIN: Sorry, Judge. CFR 31.205/32.

15 A. Well, I'm certainly familiar with CFR. I have no clue what
16 that particular reference is. I do know though that ATP does
17 not allow any project costs before the start of the project.

18 Q. Do you know whether or not the CFR, 48 CFR 31.205/32, is
19 referenced in any of the exhibits that you have testified to
20 here today?

21 A. Could you read that number again, please.

22 Q. 48 CFR 31.

23 THE COURT: 205/32.

24 MR. RUBINSTEIN: 205/32.

25 A. 48 CFR is part of -- you know, it's referenced in Exhibit
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Lide - cross

1 12.

2 Q. And the grant recipient is supposed to be responsible for
3 knowing what's in 48 CFR 31.205/32, is that correct?

4 THE COURT: She didn't say that section. It was only
5 that 48 CFR section 31 is referenced in the financial
6 assistance award Exhibit 12, Government Exhibit 12.

7 THE WITNESS: Right. And these are documents that the
8 recipient has as reference during the course of the award.

9 Q. And do you physically give the recipient -- you said you
10 give them a packet. Do you include in that packet something
11 like -- you showed us before I think on Exhibit 3, 15 CFR 14.4.

12 THE COURT: I don't know what you're referring to,
13 Mr. Rubinstein.

14 MR. RUBINSTEIN: Well, I want to know if they give the
15 recipient --

16 THE COURT: 15 CFR 24 is not one of the items that is
17 marked on Government Exhibit 12.

18 MR. RUBINSTEIN: I didn't say it was, Judge. I said
19 that it's mentioned. It may not be in the Power Point. You
20 give them a slide.

21 THE COURT: This isn't a Power Point. This is the
22 financial assistance award.

23 MR. RUBINSTEIN: Your Honor --

24 Q. What document are you looking at?

25 A. I have Government Exhibit 12, and it lists 48 CFR part 31,

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1 and, yes, that document is part of the award package which the
2 recipient receives. It says here, "The recipient agrees to
3 comply with the award provisions checked below and attached."

4 THE COURT: There is also another CFR section, isn't
5 there? CFR --

6 THE WITNESS: There are several CFRs.

7 THE COURT: 514?

8 THE WITNESS: Correct.

9 THE COURT: That's also attached?

10 THE WITNESS: No, it just says 48 CFR part 31.

11 THE COURT: But I'm on the fourth item down.

12 THE WITNESS: That's 15 CFR. Wait, one, two -- yeah.

13 THE COURT: 14?

14 THE WITNESS: Yes.

15 THE COURT: And that's also sent.

16 THE WITNESS: Yes, everything checked here is part of
17 that award package.

18 Q. In other words, on Exhibit 12, you have 15 CFR part 14,
19 correct?

20 A. Correct.

21 Q. And that is a document that has about 80 pages, correct?

22 A. Probably, yes.

23 Q. And you have CFR -- 48 CFR part 31, contract cost
24 principles and procedures, and that's a document that's about
25 200 pages long.

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Lide - cross

1 THE COURT: It's the Code of Federal Regulations.

2 Q. Is that correct, ma'am?

3 A. Yes, sir.

4 Q. And you also provide other materials to a recipient,
5 correct?

6 A. All of the items checked on Exhibit 12 are part of the
7 award package.

8 Q. And that is provided to the recipient at this first meeting
9 you told us about?

10 A. No, sir, that's Fed Exed to the recipient with the actual
11 award that the recipient signs several copies of and sends some
12 back to the government.

13 Q. And could you describe to the jury in volume how large this
14 package would be that the recipient would receive?

15 A. It's not sent from my office, so I don't know. There are
16 reference documents to be read as needed.

17 Q. And is it fair to say that the concept of ATP is that no
18 good project should go unfunded? That's your mantra?

19 A. No, sadly we didn't have enough money to follow that
20 mantra.

21 Q. Well, should a project that you funded, should it go
22 unfinished?

23 THE COURT: Sorry, I don't understand the question.

24 MR. RUBINSTEIN: I will withdraw it, Judge.

25 Q. Now, if the grantee is successful and develops a product

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1 that's used in the marketplace, is it fair to say that the
2 grantee is the one who derives the financial benefit of that
3 product?

4 A. One hopes that the grantee does and also the United States
5 as a nation. We hope that they are also an economic benefit to
6 our nation.

7 Q. Right. But nothing to replace the \$800,000 or the \$2
8 million that they got as start-up money, correct?

9 A. The government does not get any money back, no.

10 THE COURT: They're not a partner.

11 THE WITNESS: Well, we're a partner in that we give
12 them this funding and we are very pleased when they are
13 successful. That is our goal, to have successful --

14 THE COURT: But there is no financial benefit.

15 THE WITNESS: That's correct, sir, right, just
16 bragging rights.

17 Q. Now, the special condition that was involved in this
18 grant -- I think you said it was in -- was that in Exhibit 12
19 that they referred to a special condition?

20 A. It might have been 13, I believe. Yeah, special award
21 conditions are Government Exhibit 13.

22 Q. Now, you were a grant administrator?

23 A. No, I'm not, sir. I am a technical person.

24 Q. So, your job is to advise the grantee on what?

25 A. Our job is to follow the technical progress and the

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1 commercialization progress, to advise as needed, and to bring
2 in the grants specialist also as needed. We are liaisons to
3 the grants office.

4 Q. And here there was -- are you involved in determining who
5 is the recipient of the grant?

6 A. Yes, I actually ran the competition. But I obviously did
7 not review every proposal myself.

8 Q. But in this instance -- CASI was the grant recipient,
9 correct?

10 A. CASI is a grant recipient in the 2001 competition, correct.

11 Q. And that is CASI, Inc., I-N-C.

12 A. Yes.

13 Q. And Dr. Karron is a principal of that corporation, correct?

14 A. He actually signed the proposal I believe as chief
15 technical officer, and other times he signed it as president.

16 Q. And the only special condition was that CASI cofund for the
17 5 percent, correct?

18 THE COURT: Three. Is it 5 percent?

19 THE WITNESS: It's 3.61 in the special award
20 condition.

21 MR. RUBINSTEIN: OK. I was rounding it off, Judge,
22 but 3.61 is fine with me.

23 Q. And the number that you gave before of 50 some odd thousand
24 dollars, that was for the first 21 months of the grant when the
25 grant was suspended, correct?

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1 A. I don't remember saying 50 some odd thousand dollars.

2 THE COURT: I don't think there was any such
3 testimony, Mr. Rubinstein.

4 MR. RUBINSTEIN: I'm sorry.

5 Q. In fact --

6 THE COURT: The jury's recollection will govern, but
7 that's my recollection.

8 Q. And in Exhibit 26 it gives a recipient share of the cost in
9 that Exhibit of \$67,000 even.

10 THE COURT: You are referring to the --

11 MR. RUBINSTEIN: Government Exhibit 26, your Honor.

12 THE COURT: All right. This is the proposal for the
13 second year?

14 MR. RUBINSTEIN: No, your Honor. This is the -- I'm
15 sorry. I must have given you the wrong number.

16 THE WITNESS: This shows the first and second year
17 together.

18 MR. RUBINSTEIN: I'm sorry, your Honor.

19 Q. Is it fair to say, Ms. Lide, that the grant was suspended
20 for not contributing the cofunding 3.61?

21 A. That is the reason for the suspension.

22 Q. And are you aware that after the suspension on June 27,
23 2003, that Dr. Karron deposited \$60,000 in the CASI account?

24 A. I saw documentation of that only in the ATP file. I was
25 not aware of it at the time. At that point the negotiation was

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1 between CASI and our grants office.

2 Q. So you were out of the loop basically?

3 A. I was a technical project manager, and Dr. Karron had to
4 satisfy the requirements from our grants office, because all
5 official documentation comes from them.

6 Q. Now, there are other special conditions that can be placed
7 on a grantee, is that correct?

8 A. Yes.

9 Q. As a matter of fact, there are conditions. Sometimes you
10 have companies that aren't financially sound or financially
11 stable to qualify for grants, correct?

12 A. Could you please define financially sound.

13 Q. In the CASI grant there was to be an audit at the end of
14 the first year.

15 A. That's true of all three-year single applicants.

16 Q. Isn't it a fact that under the rules of ATP, that you could
17 have with a single applicant grant more -- you could have an
18 earlier audit than at the end of the year?

19 THE COURT: The first year.

20 MR. RUBINSTEIN: First year.

21 A. If you requested it.

22 Q. Is the financial responsibility of the prospective grantee
23 something that's looked at in determining whether or not to
24 grant an award?

25 A. The organizational structure and the ability to sustain the

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1 award is looked at, yes.

2 Q. How about the individual, the individuals involved in the
3 grantees, as to their financial management capabilities?

4 A. No, we look at the corporation. We do not look at the
5 individuals. We do clear the individuals for other things like
6 criminal offenses and disbarment, things like that, but we do
7 not, to the best of my knowledge -- I have never looked at an
8 individual's records.

9 Q. How about whether or not they pay their income tax, do you
10 check that?

11 A. No, unless it shows up on one of the government clearances
12 that are done routinely.

13 Q. That are done with what?

14 A. There are certain routine forms that principals of a
15 company fill out, and then they go through routine clearances
16 downtown at Department of Commerce, Department of Justice, so
17 unless they look at income tax. But ATP certainly does not
18 look at an individual's income tax.

19 Q. So, in other words, before a person gets a grant there are
20 other organizations in government that check the person or the
21 company in some way to find out if they're felons or whatever.

22 A. There are clearances, that is correct.

23 Q. So CASI received a clearance, correct?

24 A. CASI received a grant, so clearly the clearance went
25 through.

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1 Q. And what agent -- do agencies have to submit a document
2 with ATP that they have cleared CASI to receive \$800,000 in one
3 year?

4 A. Do agencies --

5 THE COURT: Objection to the form of the question,
6 because there is more than one conclusion.

7 Q. Let me ask you this. You are familiar with the office of
8 the inspector general of the Department of Commerce, correct?

9 A. Yes.

10 Q. And, as a matter of fact, the special agent that you
11 pointed out who was here before, she is with that organization,
12 correct?

13 A. Yes.

14 Q. And does the inspector general, do they investigate on
15 behalf of ATP the qualifications of a grant recipient?

16 A. To the best --

17 THE COURT: If you know.

18 A. Someone you mentioned earlier handled that part of the
19 process, Ms. Barta Lambis, and that was not part of my
20 responsibility. I do know that there are clearances.

21 Q. And it's fair to say that these funds, this \$800,000, is
22 not put in escrow, correct?

23 THE COURT: Asked and answered. She told you where it
24 was put.

25 Q. And when you withdraw the funds, is there any requirement

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1 to segregate these ATP funds from any other funds that the
2 company might have?

3 A. Yes, one has to have an accounting system that accounts for
4 what goes to the ATP project.

5 Q. A system, correct?

6 A. An accounting system.

7 Q. But not a separate bank account for these federal funds,
8 correct?

9 A. As long as one can account for the spending of the funds
10 from that account to the CASI project.

11 Q. Now, did there come a time that you had --

12 By the way, is the grantee, in this case CASI, are
13 they permitted to get additional funding sources outside of ATP
14 to develop their project?

15 A. That's encouraged.

16 Q. And in fact in this case with CASI they were exploring,
17 were they not, getting funds from New York state?

18 A. Correct.

19 Q. And in fact you learned they were unable to get funds
20 because this grant started October 1, 2001 and 9/11 happened
21 2001.

22 A. It was not my understanding that that was the reason. In
23 fact, it was my understanding that they were pursuing other
24 sources of funds. Later in the course of the project, some of
25 the quarterly reports actually had what they submitted to other

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1 funding agencies.

2 THE COURT: It's your understanding in this area,
3 based on reports from CASI.

4 THE WITNESS: And conversations, yes, sir.

5 THE COURT: But nothing else.

6 THE WITNESS: No, sir.

7 THE COURT: So, you don't have any independent
8 knowledge.

9 THE WITNESS: No, sir.

10 THE COURT: You are just repeating what they told you.

11 THE WITNESS: What they told me verbally and what we
12 got in the quarterly reports.

13 THE COURT: From them.

14 THE WITNESS: Correct.

15 Q. Do you recall being a recipient of an e-mail, Government

16 Exhibit 3501-DDDDDD?

17 THE COURT: 3501 what?

18 MR. RUBINSTEIN: DDDDD.

19 THE COURT: D, as in dog?

20 MR. RUBINSTEIN: Yes, your Honor.

21 THE WITNESS: Do I have that?

22 THE COURT: Do you want to show it to the witness.

23 Q. I show you this e-mail, it's actually from you. Do you
24 want to review it and see if it refreshes your recollection?

25 A. Sure.

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1 THE COURT: Is that DDD?

2 MR. RUBINSTEIN: Five Ds, your Honor.

3 THE COURT: Five Ds, as in dog.

4 MR. RUBINSTEIN: 3501 five Ds.

5 Your Honor, the government hasn't provided these

6 documents to the jury, your Honor.

7 THE COURT: I understand.

8 MR. RUBINSTEIN: I know, but the jury is looking.

9 THE COURT: You won't have it there in your books.

10 What's your question on the document?

11 Q. Yes. Does that refresh your recollection of discussions

12 about New York state, attempting to get New York state funding?

13 A. Even without that e-mail, I acknowledge that CASI was

14 trying to get other funding.

15 Q. And you said something about that they had indicated they

16 wanted to open an office in downtown Manhattan, correct?

17 A. That's what I recall Dr. Karron telling us, yes.

18 Q. And in fact you are aware that it was virtually impossible

19 to find offices in downtown Manhattan after 9/11/01, correct?

20 A. I honestly thought -- I recall some discussion on perhaps

21 rent would be cheaper and it would be easier, and there were

22 also other offices being considered.

23 Q. And one of them was at CUNY.

24 A. Correct.

25 Q. And in fact did you learn that CUNY wanted \$1 million in

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1 rent to run the CASI project out of their facility?

2 A. I did not know that.

3 Q. Did you inquire of Dr. Karron at any time what happened to
4 the facility at CUNY?

5 A. Actually the quarterly reports reported that they were
6 still looking for space, and although it hadn't come through
7 yet it was still a possibility, and that documentation
8 indicated to us that he was still pursuing other lab space.

9 Q. And you came in contact with this Mr. Orthwein, correct?

10 A. Correct.

11 Q. You met him personally?

12 A. Correct.

13 Q. And you had a number of telephone calls with him, correct?

14 A. Correct.

15 (Continued on next page)

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1 Q. And could you estimate how often he would call you on
2 behalf of CASI?
3 A. I could not estimate. Many of the communications were from
4 Dr. Karron, himself.
5 Q. Now, you say you went to the 300 East 33rd Street where
6 CASI was located, correct?
7 A. Correct.
8 Q. Could you, when you went there, on your -- you went there
9 on your first site visit, right?
10 A. We went there two site visits, correct.
11 Q. And your first site visit was in 2001?
12 A. The first -- both site visits were in 2002, May and
13 October.
14 Q. And when you went on this site visit, could you describe to
15 the jury what this facility looked like?
16 A. It looked like someone's personal abode with a living room
17 with a large number of computers.
18 Q. Was there anything other than computers in the living room?
19 A. I remember, you know, facility like a screen to show a
20 power point presentation. The overwhelming impression was a
21 lot of computers.
22 Q. And, in fact, you told us that it was very hot in there?
23 A. No, I didn't think it was hot at all. It was brought to
24 our attention that because of the computers, Dr. Karron felt
25 ATP should pay for additional electricity for air conditioning.

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1 Q. And that was something that was going to be negotiated,
2 correct?

3 A. No. We said that it's normally not covered. We didn't
4 think it would be covered. He could apply and see what the
5 grants office said, but it was not an item that we expected to
6 negotiate, because we've never seen it done before.

7 Q. Well, are you aware that CASI was asked to submit their
8 prior year bills on electricity to their current year's usage?

9 A. No, I was not aware. But any approval for that would have
10 come from the grants office. I was not part of that.

11 Q. You're not part --

12 THE COURT: I think I should instruct the jury that
13 it's the witness' answers that are the evidence before you.
14 It's not the lawyers' questions. So you're not to draw any
15 conclusions from the fact that the lawyer asked the question.
16 It's what the witness answers that is the evidence before you.

17 Q. Well, there were -- did you ever hear of the term, site
18 preparation?

19 A. I've not heard that term. I can imagine what the
20 definition would be.

21 Q. Isn't it a fact that a grantee is permitted to to prepare
22 the facility where the project is going to be run to
23 accommodate the equipment, if you need equipment in the grants;
24 is that so?

25 A. The grantee certainly has authority to do whatever he or

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1 she wants with the space at the laboratory. It's a question of
2 who pays for that, and ATP does not pay for major renovations.

3 Q. Well, Exhibit 1 that's actually in the binders, and page
4 six of that exhibit, do you recall testifying about that on
5 direct examination?

6 A. Correct.

7 Q. And you testified that the project doesn't pay for
8 construction costs, correct?

9 A. Correct. It says here, those are unallowable costs to ATP.

10 Q. Well, how about the next line, does it say, reading from
11 Government's one in evidence; however, construction of
12 experimental research and development facilities to be located
13 within a new or existing building are allowable, provided the
14 equipment or facilities are essential for carrying out the
15 proposed scientific and technical project and are approved by
16 NIST grants offices?

17 THE COURT: You asked her if it says that?

18 Q. Is that what that document says, in whole?

19 A. Yes, it does. However, that was not proposed in the
20 proposal. I have managed over 50 ATP projects over 15 years
21 and we have never paid for that.

22 MR. RUBINSTEIN: I move that be stricken as not
23 responsive.

24 THE COURT: Well, the later the part of it, the last
25 the jury is instructed to disregard the part about the 15

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1 years. But the witness testifying that not this language is
2 not in the grant proposal is allowed.

3 Q. The proposal, itself, in other words when you met with Dr.
4 Karron, did you tell him that, you know, in 15 years we've
5 never once allowed any kind of site preparation costs; did you
6 ever say that, yes or no?

7 A. We said it was highly unlikely that it would be approved.

8 Q. Your department is not the one that approves or
9 disapproves, correct?

10 A. My department recommends approval or disapproval.

11 Q. And there is an appeal process?

12 A. It's no appeal process. The decision is made in our grants
13 office, so we can recommend, but they make the decision.

14 Q. And, in fact, could you describe the size of these
15 computers that were in this office of CASI?

16 A. There were several silicon graphic servers and some work
17 stations. Technology has changed.

18 The other point I'd like to make is the request for
19 these were not in the original budget, so he would've needed an
20 approval of a different budget anyway to use the money for
21 these items.

22 Q. Fine. But you can get budget revisions, right?

23 A. You can get budget revisions.

24 Q. And it's a question of whether or not somebody says that
25 this is an appropriate expense or not an appropriate expense,

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1 correct?

2 A. He was advised that if he wanted to suggest it, we would
3 certainly see what the grants office said.

4 THE COURT: What they said or write?

5 THE WITNESS: I'm sorry, what they wrote, yes, sir,
6 had to be in writing -- sorry. The decision the grants office
7 made would be appropriate way to say that.

8 Q. Isn't it a fact that in November of 2001, there were
9 requests, oral requests for budget revisions by Dr. Karron?

10 A. And, indeed, a budget revision was approved in December of
11 '01. That's one of the government exhibits, and nothing for
12 those expenses occurred in that budget revision.

13 THE COURT: Submitted by?

14 THE WITNESS: CASI submitted a new budget that was
15 approved in December of 2001, and there were no changes in the
16 budget that would reflect the desire for these renovations.

17 Q. What kind of renovations were they?

18 A. I would assume we are talking about the air conditioning.

19 Q. And the air conditioning, Dr. Karron advised you, was
20 necessary because the computers which were running, correct?

21 A. Yes, sir.

22 Q. And in fact these, you learned that these computers were
23 running virtually 24 hours a day?

24 A. But my point is if he wanted that renovation, it should
25 have been requested in a revised budget, if he wanted to spend

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1 the Government's money for it.

2 Q. Should have been, correct?

3 A. Correct.

4 Q. Now, they did ask for a revised budget as to employees, did
5 they not, in November of 2001?

6 THE COURT: What's the question?

7 Q. To reduce part of the revision request was to reduce the
8 salaries for employees?

9 A. One of the -- there was a minor reduction in -- I'd have to
10 look up that budget if we're going to do that, please.

11 THE COURT: Exhibit what?

12 THE WITNESS: It's one of the amendments, sir.

13 THE COURT: What date are we talking about?

14 THE WITNESS: Yeah, which exhibit is --

15 THE COURT: Mr. Rubinstein, what date are you talking
16 about?

17 THE WITNESS: It's, it's amendments one or two, I
18 think.

19 THE COURT: What exhibit are you talking about, Mr.
20 Rubinstein, so we can get along with this?

21 MR. RUBINSTEIN: I believe it is --

22 THE WITNESS: Let's see, it's going to be 22.

23 MR. RUBINSTEIN: Thank you.

24 THE WITNESS: Certainly.

25 THE COURT: 22?

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1 THE WITNESS: Yes, sir. Exhibit 22. And the salaries
2 were reduced from 375 to 325. However, that was offset by the
3 increase in subcontractors from 200 to 250.

4 Q. When they reduced the salaries, they also reduced the
5 fringe benefits, did they not, in the revised budget?

6 A. Correct, and they upped the travel and the materials. The
7 net change in the budget was zero.

8 Q. The concept of ATP is, don't spend more than the 800,000,
9 correct?

10 A. You cannot spend more than 800,000 during the first year of
11 the project or however much you've budgeted, correct.

12 Q. And when CASI submitted their budget, did anybody from ATP
13 question any line in the budget?

14 A. There was -- there is a source of valuation board which
15 consists of approximately 15 high level individuals who look at
16 that proposal, including the budget. And, indeed, if there are
17 any questions, those are either answered at what's called an
18 oral review, or there are documents that go back and forth with
19 questions and answers. But the final document is the one that
20 is approved in the award itself.

21 THE COURT: Well, looking at exhibit 26, Ms. Lide.

22 THE WITNESS: Yes, sir. 26?

23 THE COURT: Are the explanations of the changes in the
24 budget included in the second page of the budget request?

25 THE WITNESS: I'm afraid I misplaced 26.

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1 THE COURT: I'm sorry, did I say 26? 22.

2 THE WITNESS: 22? There is --

3 THE COURT: Is the one you say is the --

4 THE WITNESS: Yes, sir. And in my exhibit I -- there
5 is an e-mail where the changes --

6 THE COURT: No, I don't want something -- oh, it's a
7 part of exhibit --

8 THE WITNESS: Yes, yes.

9 THE COURT: The second page?

10 THE WITNESS: Oh, it's the one, two, three, the fourth
11 page of exhibit 22 is the explanation and rational for the
12 changes.

13 THE COURT: And then there's one item that's called
14 contracting costs.

15 THE WITNESS: Correct, so --

16 THE COURT: What is that for?

17 THE WITNESS: Basically, they were changing the status
18 of at least one employee to a consultant instead of an
19 employee.

20 THE COURT: But who is that consultant?

21 THE WITNESS: The one I'm reading here now is
22 Professor George Wolberg.

23 THE COURT: That's not air conditioning, is that
24 right?

25 THE WITNESS: That is correct, it is not. There's no

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1 change in this budget that would anyway reflect the request for
2 paying for air conditioning.

3 THE COURT: All right.

4 Q. By the way, in Exhibit 1, the proposal kit?

5 A. Yes, sir.

6 Q. Do they amend these kits from time to time?

7 A. Absolutely.

8 Q. The proposal kit we have in evidence says 2000?

9 A. That is correct, and it was prepared for the 2001
10 competition. That is the kit under which CASI applied.

11 Q. And when you made that site visit, you saw a number of
12 individuals there who were not listed in the budget that was
13 submitted to ATP, correct?

14 THE COURT: Which site visit, Mr --

15 Q. The first site visit?

16 A. There was some confusion on our part as to who was in the
17 room versus who was in the proposal, and we reminded Dr. Karron
18 to formally submit any changes in personnel with justification.

19 Q. And did you discuss who those people were in the apartment?

20 A. We go around and we make introductions and we discuss --
21 yes, who those people were.

22 Q. And did you learn that they were students, graduate
23 students that were there?

24 A. Uh-huh. Some of them, right.

25 Q. And were working on this project, right?

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1 A. And what we were asking was for official documentation so
2 that they could become part of the official grants.

3 Q. Did you understand that some of these people were working
4 without compensation?

5 A. And that is perfectly acceptable, and then we don't need
6 the official approval as long as they're not getting government
7 funds.

8 Q. You found that -- by the way, when you would get e-mails
9 from Dr. Karron, what hours of the day or night would you say
10 you would get e-mails from him?

11 A. I assume you mean when they're written?

12 Q. Yes.

13 A. I think it's across the board, as most of us read e-mail
14 and write e-mail, basically, 24 hours a day.

15 Q. And are you aware of any other project that CASI was
16 involved in?

17 A. At that time, there were some listed in the original
18 proposal. We always ask what other projects are you doing or
19 have you done, and there were several in the original proposal.

20 Q. Of projects that had been done, correct?

21 A. Correct.

22 Q. And, in fact, you knew that this was the only project that
23 CASI was working on was this ATP grants, correct?

24 A. That was our understanding. At the same time, it was our
25 understanding that they were looking for other funding to do

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1 complimentary research.

2 Q. Now, it's fair to say that you, in your capacity of were
3 watching over these various projects, correct?

4 A. Uh-huh.

5 Q. To assist them in developing, right?

6 A. Assist them in developing?

7 Q. Yeah, so that they could eventually meet whatever
8 scientific end were capable being; that's the hope, right?

9 A. The research is theirs to perform.

10 Q. And you you evaluate, do you not, how they're performing,
11 correct?

12 A. We get quarterly reports which we read, and oversee
13 progress.

14 Q. Isn't it a fact that you found that CASI's project was
15 technically exciting?

16 A. Yes. It would not have received an ATP award if it were
17 not.

18 Q. And is it a fact that while the CASI perform was suspended,
19 it seemed to be making technical progress?

20 A. Technically it seemed to be making progress, yes. If it's
21 not meeting the goals in the proposal, then clearly it's
22 suspended for other reasons.

23 Q. Now, in the budget you're allowed to move any item --
24 increase it by 10 percent, is that correct?

25 A. If you decrease something else by the equivalent amount,

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1 and if it's within 10 percent of that year's budget. So
2 cumutatively over year one, only \$80,000 could have been moved
3 without prior approval.

4 Q. Can you -- in other words, they doesn't utilize the
5 10 percent, the ten million -- the two million rather?

6 A. No. It's on a year-to-year basis.

7 Q. And is that specified in some of this material?

8 A. Yes. I believe it's actually in the special award
9 condition, which I can try to find, but that's articulated very
10 clearly in -- at all these meetings and kickoffs and proposers
11 conferences, et cetera. It could also be in Exhibit 4 in those
12 slides.

13 Q. Isn't it a fact that -- you've testified about receiving
14 prior approval, correct, in writing before you do something?

15 A. Yes, sir.

16 Q. Isn't it a fact, ma'am, that you --

17 THE COURT: I'm sorry?

18 Q. -- received approval for the first time at the end of the
19 the year that you could seek budget revisions?

20 MR. KWOK: Objection.

21 THE COURT: I don't understand the question, Mr --

22 Q. Are you prepared --

23 THE COURT: You will have to start over again because
24 I couldn't follow your question.

25 THE WITNESS: Thank you.

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863ZKAR4

Lide - cross

1 Q. Are you permitted, at the end of the first year, to review
2 the cost, your cost and submit a revised budget and a narrative
3 if changes have occurred?

4 A. No. You are permitted to request changes and get approval
5 in writing at any point. But as I said earlier in testimony,
6 after the fact it is at your own risk.

7 Q. Let -- the Exhibit 4 is -- the government Exhibit 4 are the
8 slides, correct?

9 A. Yes, sir.

10 Q. Now, I show you this document. You have the original of
11 Exhibit 4, do you not?

12 A. I have the government Exhibit 4. I assume it's the
13 original, if it has a yellow sticker.

14 THE COURT: You have the excerpts or the whole thing?

15 THE WITNESS: I believe I have the whole thing,
16 Exhibit 4.

17 Q. Why don't you turn to page 11. Unfortunately, the jurors
18 don't have this page.

19 THE COURT: It's not in your books, ladies and
20 gentlemen, I don't believe.

21 MR. RUBINSTEIN: Is there a way to put that up on the
22 board; do they have the whole document in there?

23 THE COURT: Exhibit 11? Have we got exhibit 11?

24 MR. RUBINSTEIN: Exhibit 4, page 11, your Honor.

25 THE COURT: Page 11?

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Lide - cross

1 THE DEPUTY CLERK: Exhibit four, page 11?

2 MR. RUBINSTEIN: That's correct.

3 THE COURT: All right.

4 THE DEPUTY CLERK: Exhibit 4, page 11.

5 THE COURT: All right, it's placed on the -- is this

6 the -- you've got the correct page you want?

7 THE COURT: Leave it up there, who is putting it up?

8 MR. RUBINSTEIN: I'll show you what it is. No, just a

9 second. Here.

10 Q. That is one of the pages that you show at the first meeting

11 with the people from CASI, correct?

12 A. Correct.

13 Q. Now, on that page it says, recipient responsibility, does

14 it not, ma'am?

15 A. Yes, it does.

16 Q. And it says in the second paragraph, review costs at the

17 end of each year and submit a revised budget and a narrative if

18 changes have occurred, correct?

19 A. That's what it says, yes, sir.

20 Q. And that was shown to Dr. Karron, right?

21 A. Correct.

22 Q. Lee Gurfein was there?

23 A. He was at the kickoff.

24 Q. And Dr. Satava was there, correct?

25 A. Correct.

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Lide - cross

1 MR. RUBINSTEIN: Your Honor, this is a good spot to
2 break for lunch.

3 THE COURT: Let's finish the line of questioning. Are
4 you almost done with this?

5 MR. RUBINSTEIN: No, but with this exhibit. If you
6 want me to continue with the exhibit, I have no --

7 THE COURT: No, whatever your point is.

8 MR. RUBINSTEIN: No, this point I'm finished with,
9 Judge.

10 THE COURT: Oh, you're finished with it? Okay.

11 MR. RUBINSTEIN: Yeah. I'll -- just a second, Judge,
12 maybe I'm not finished.

13 BY MR. RUBINSTEIN:

14 Q. So, in fact, according to this page, page 11, you don't
15 have to submit to get written approval before you spend the
16 money, correct?

17 A. No, that's taken out of context.

18 Q. Okay.

19 MR. RUBINSTEIN: No further questions on this topic at
20 this time.

21 THE COURT: All right, then we'll -- the jury is
22 excused. Please come back at 2:00 o'clock and we'll resume.

23 (Jury exits the courtroom)

24 THE COURT: Counsel.

25 (In open court; jury not present)

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Lide - cross

1 THE COURT: Ms. Lide, I guess you're excused.

2 THE WITNESS: I'm sorry, I'm sorry.

3 THE COURT: It's all right.

4 THE WITNESS: I'm trying to get --

5 THE COURT: You have to wait till the jury leaves, and
6 then be back here by 2:00 o'clock.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Do you want an instruction to the witness,
9 Mr. Rubinstein?

10 MR. RUBINSTEIN: No, your Honor. I have no problem
11 with Ms. Lide.

12 THE COURT: Anything else?

13 MR. KWOK: Nothing from the government at this time.

14 THE COURT: Let's be back here about ten minutes to
15 two, so we're -- if you think of anything at that time we'll be
16 able to deal with it and not hold up the jury.

17 MR. DiCENZO: Your Honor, I just want -- I'm an
18 associate of Mr. Rubinstein's my name is William Di Cenzo and I
19 just want to inform you that I may be sitting at counsel table.

20 THE COURT: What's your name?

21 MR. DiCENZO: William DiCenzo.

22 THE COURT: All right.

23 MR. DiCENZO: Just to let you know.

24 MR. EVERDELL: Your Honor, there is one other thing.
25 It is possible for the next witness we may be introducing a

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Lide - cross

1 document that we hadn't anticipated needing to do, but the CFR
2 regs, and I have copies of it, I have enough for the jury, it's
3 not in the sanction program, but we can use the Elmo for it.
4 If and when we need to do that, would it be all right for me to
5 just pass out the applicable regs to the jury and --

6 MR. EVERDELL: -- do it that way.

7 THE COURT: The whole CFR?

8 MR. EVERDELL: Just the particular regs that the
9 witness will be testifying to and that -- I mean I could mark
10 it as a government exhibit or the Court could take judicial
11 notice of the fact that it's the CFR reg, either way is fine
12 with me.

13 THE COURT: Well, give Mr. Rubinstein notice that
14 you're doing it.

15 MR. RUBINSTEIN: I have my own copy of the regs. I
16 have an objection to, if they they want to put this in
17 evidence, and then want to show that one page, okay. I
18 don't -- I think that's an appropriate thing to do. But to
19 give the jury one page of a reg, I think is absolutely
20 misleading.

21 THE COURT: You can --

22 MR. EVERDELL: I can't give him the entire CFR, that
23 seems a little silly. I'm giving them the reg that's
24 applicable to her testimony, and I don't even need to put it
25 into evidence because it's the CFR and you can take notice of

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1 it. It doesn't even need to be in evidence. It's a law. I'm
2 just doing this for the purposes so the jury to follow along
3 and so that we can make it go smoothly.

4 MR. RUBINSTEIN: That puts it in evidence if it's law,
5 CFR.

6 The point of the matter is, Judge, that, you know,
7 they're cherry picking. This is a term for 2001, cherry
8 picking, I learned it. And they have a 100 page document and
9 they want to -- if somebody was giving me \$2 million, I would
10 say, where do I sign and be out the door.

11 MR. EVERDELL: It seems like counsel would like me to
12 give them the entire book of the Code of Federal Regulation,
13 which is not --

14 THE COURT: I'm going to allow them to just produce
15 the CFR and put it up on the board.

16 MR. EVERDELL: Thank you, your Honor.

17 THE COURT: It's Code of Federal Regulation. There
18 are more than one section of the CFR that --

19 MR. EVERDELL: Yes, your Honor. The only one that I
20 believe the witness, I'll need the witness to testify about is
21 a two page section, we'll just handle it with the elmo.

22 THE COURT: Of course you can put in whatever reg you
23 want to.

24 MR. EVERDELL: We absolutely can.

25 (Luncheon recess)

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1 A F T E R N O O N S E S S I O N

2 2:00 p.m.

3 THE DEPUTY CLERK: All rise.

4 THE COURT: Please be seated.

5 (Jury not present)

6 THE COURT: Are we ready for the jury?

7 MR. RUBINSTEIN: Yes, your Honor.

8 MR. KWOK: Yes, your Honor.

9 THE COURT: All right, let's get the witness; bring in
10 the jury.if they're ready.

11 (Jury entering)

12 THE COURT: Please be seated, witness take the stand.

13 Please be seated. Continue, Mr. Rubinstein.

14 MR. RUBINSTEIN: Thank you, your Honor.

15 BY MR. RUBINSTEIN:

16 Q. Miss Hayes, I'm sorry, Ms. Lide, CASI was a unique company,
17 was it not, in the fact that it only had the ATP grants that
18 they were working on?

19 THE COURT: I think you've been through this before,
20 Mr. Rubinstein.

21 MR. RUBINSTEIN: I'm just laying --

22 THE COURT: It's getting very duplicative.

23 BY MR. RUBINSTEIN:

24 Q. It's a fact that indirect costs are not allowed according
25 to ATP grants, correct?

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Lide - cross

1 A. Yes.

2 Q. And indirect -- and the reason for that is that if a

3 business is functioning, they may have other customers and

4 other work and they don't apply to costs, divide up the costs

5 of the rent between a number of different customers?

6 A. Is that a question, sir?

7 Q. Yeah.

8 A. Or statement?

9 Q. It's a question.

10 A. No. The reason actually for a single company paying its

11 own indirect cost is because the U.S. Congress set up the

12 Advanced Technology Program as a cost sharing program, and they

13 wanted the government to share the risk. But they also wanted

14 to know that the for profit company had something at risk also.

15 So it's by statute, the ATP statute, which is part of the

16 Omnibus Trade Bill of 1988 established that, and that was the

17 reason for it.

18 Q. In fact, there's a 3.61 co-pay, right? Is that so that the

19 person has to put up a co-pay?

20 A. No sir. No, sir. The only requirement, according to the

21 ATP statute for a single company, is that they pay their own

22 indirect costs. They can also propose to pay some of the

23 direct costs, which in CASI's case was the case.

24 Q. And they could request that ATP permit them to pay some

25 indirect costs and approve that, correct?

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Lide - cross

1 A. They have to pay all their own indirect costs. They don't
2 request that, it's in our legislation.

3 Q. Isn't it a fact that CASI was negotiating with your agency
4 to approve part of the electrical expenses as a direct cost to
5 the project?

6 A. I am not aware of that, sir.

7 Q. And how many -- do you have -- are you aware of the amount
8 of time that Dr. Karron spent on the CASI project?

9 A. It's my --

10 THE COURT: This --

11 MR. KWOK: Objection.

12 THE COURT: This witness was not present during the
13 time that doctor, all the time that Dr. Karron was working on
14 the project. Let's, please, let's get the questions that this
15 witness can answer.

16 Q. Well, you questioned Dr. Karron as to what he was doing,
17 did you not?

18 THE COURT: That --

19 A. I don't remember questioning him as to what he was doing.

20 Q. Now, the Exhibit 4 you said were slides that you show --
21 you showed CASI at the initial kickoff meeting, correct?

22 A. Yes, that is correct.

23 Q. Now did you -- when you call them slides, were they
24 actually slides that you put on the screen or you just handed
25 them?

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Lide - cross

1 A. I don't recall whether they were on a screen or not. It
2 was in a room that would have that capability.

3 I know we also give hard copy, and we also e-mail them
4 so that we make sure the recipient has them. But whether or
5 not we showed them on a screen that day, it was a small group,
6 I'm not sure.

7 Q. Well, did you discuss there were a number of pages, the
8 actual exhibit, correct?

9 A. Yes.

10 Q. There are, fair to say, there's at least 60 pages in the
11 original exhibit?

12 A. Uh-huh.

13 Q. Did you discuss each page with Dr. Karron and Lee Gurfein,
14 and the other doctor that was present?

15 THE COURT: Which page of which exhibit?

16 MR. RUBINSTEIN: Exhibit 4.

17 A. There were three of us and, yes, we do go through page by
18 page highlighting the key events on each page. There are three
19 of us and we do go page by page, that is correct.

20 Q. You have no notes as to which you highlighted and which you
21 didn't highlight, correct?

22 A. Well, what we usually do is almost read the bullets and ask
23 the recipient if there are any questions.

24 But each of the three of us would have done it
25 differently, and I certainly cannot speak to how the other two

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Lide - cross

1 individuals did their parts this much after the fact.

2 I know I tend to go bullet by bullet and make sure
3 it's understood by the recipient.

4 Q. And were there, at this kickoff meeting, were there
5 discussions as to these various points?

6 A. We, we discussed these various points. Whether or not
7 there were respect questions on CASI's part, I do not recall.
8 But we always ask, do you have any questions about this.

9 Q. Now, Exhibit 4, is that the actual exhibit that was
10 presented to CASI on this kickoff visit?

11 A. Yes.

12 Q. And that kickoff visit was what date?

13 A. It was November of 2001. And if I had to come up with a
14 day, I would say 8th'ish.

15 Q. Now, take a look at exhibit four. You see the first page
16 of Exhibit 4?

17 A. First page, okay.

18 Q. Says CASI introduction to ATP project management?

19 A. Well, actually mine's in a different order, sir. My first
20 page says grants and agreements management division. I do see
21 the page -- oh, and I was right, it's November 8th. I do see
22 the page to which you're referring.

23 THE COURT: What page is it, so the record's clear?

24 MR. RUBINSTEIN: The original Exhibit 4 are 65 pages,
25 your Honor.

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Lide - cross

1 THE COURT: Let's have the page so we can put it up on
2 the board. It isn't in the highlight, the extracts, right?

3 MR. KWOK: I don't believe so, your Honor, but we will
4 attempt to show it on the screen.

5 THE COURT: So the jury won't have it in the extracts.

6 MR. RUBINSTEIN: Could we put it on the elmo, your
7 Honor?

8 THE COURT: Yes. This is a page from Exhibit 4?

9 MR. RUBINSTEIN: Even I know how to do that one,
10 Judge.

11 Q. Now that's the first page, right?

12 A. In my folder it is not. However, I do believe that that is
13 how we started the kickoff.

14 Q. Now, you see the upper left-hand portion of that screen
15 where it says, ATP?

16 A. I do, yes, sir.

17 Q. Are you telling us that this is the same document that you
18 presented on November 8th, 2001?

19 A. I would find it hard to believe that it's not. I mean, two
20 pages later we have the information with our names on it,
21 and --

22 Q. Let me show you what's government -- could we put this
23 side-by-side, please? It's Government's Exhibit 4. Is there
24 an exhibit page? I would like to put this side by side.

25 A. That's the first page in my exhibit, that is correct.

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Lide - cross

1 Q. Okay. And could we put it up, the first page?

2 A. Uh-huh.

3 Q. Now, do you see that the ATP is, you say that's from the
4 same file?

5 A. Absolutely.

6 Q. Different font sizes of the --

7 A. Correct. I can explain that if you like.

8 Q. And where did you retrieve this Government's Exhibit 4?

9 A. In the master file, in the Advanced Technology Program, as
10 I mentioned earlier, it's a documentary file of all of the
11 information for that project.

12 Q. Now, included in this submission is a page that I don't
13 think is in the binders.

14 THE COURT: Just ask the question, let's not have a
15 speech.

16 Q. I show you this page.

17 THE COURT: The jury is instructed you're not to take
18 the questions as being any evidence whatsoever. Such facts as
19 exists in the answer that matters.

20 MR. RUBINSTEIN: I'll withdraw the question, Judge.

21 Q. In the recipient responsibility, did your chart -- did your
22 presentation advise the recipient that they were required, if
23 there was a change in the organizational structure, such as a
24 name change, that they had to notify and get prior approval?

25 THE COURT: Are you asking whether on page two of

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Lide - cross

1 government exhibit --

2 MR. RUBINSTEIN: This is --

3 THE COURT: Four.

4 MR. RUBINSTEIN: This has a number seven. Mine has a
5 number seven on the right-hand side. It's not up there, Judge.

6 Q. This is the page that says prior approvals, notify the
7 grants specialist, right?

8 A. Okay. And those are the kinds of changes that we need to
9 be apprised of instantly, and prior approval should be received
10 in writing.

11 Q. Did you ever receive a request for the name change of CASI?

12 A. I don't recall receiving that.

13 Q. Are you --

14 A. But -- I don't recall seeing that.

15 Q. Are you aware that the prior approval, according to the, to
16 exhibit four, that somebody must have notified the grant
17 specialist the prior approval, if there is a name change?

18 A. That is the sort of change that we like to receive as soon
19 as possible, and prior approval then is provided as a written
20 amendment.

21 Q. Now, when you came for the site, the first site visit and
22 you came -- you met with Dr. Karron, did you meet Joan Hayes at
23 that time?

24 A. I have met Joan Hayes. I would assume she was at that site
25 visit, but I cannot verify that in any certainty.

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Lide - cross

1 Q. Well, when you went to the site visit, is it a fact that
2 you went to lunch with Dr. Karron, with your partner, Jane
3 Orthwein, you went to a restaurant called Benjamin's for lunch?

4 A. I believe so.

5 Q. And you had gone to lunch -- when Dr. Karron came to
6 Washington, you had lunch together with him there too in a
7 dining room?

8 A. We met in the cafeteria.

9 Q. And it's part of the protocol, government protocol that you
10 pay for your own lunch when you go out with somebody who is a
11 recipient of the grants?

12 A. Yeah. We are only allowed to accept a certain level of any
13 financial remuneration.

14 Q. So there never was a time that Dr. Karron took you out for
15 some kind of a lavish meal somewhere and picked up the check,
16 right?

17 A. We would not have permitted that, thank you.

18 Q. And so did you think that he was making a joke when you
19 testified that he told you if he, if he took you out for a nice
20 meal, then he wouldn't have to make any budget revisions?

21 MR. KWOK: Objection.

22 THE COURT: Objection sustained.

23 Q. By the way, do you recall if you ever went to lunch with
24 Dr. Karron and Joan Hayes, as you sit there now?

25 A. I certainly do not recall that.

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Lide - cross

1 Q. Now, the equipment that was purchased by Dr. Karron
2 pursuant to this grants, could you describe what he purchased?

3 A. I could describe what was in the proposal, which were
4 several silicon graphics servers and some work stations.

5 Q. In fact, he would buy parts and put them together and
6 basically create his own computers, correct?

7 A. Um, the discussion on that was not consistent.

8 Q. Well, in other words, if I -- if somebody wanted to go buy
9 a computer and they --

10 THE COURT: Well, the form of the question, Mr --

11 Q. Well, was it, the computers that Dr. Karron had, did they
12 have any brand name on them?

13 A. It was my understanding that the ones he wished to purchase
14 were silicon graphics. In the original proposal, it was said
15 that the company had a state-of-the-art computer facility.

16 Later in the quarterly reports it was said that this was
17 patched together. So I had some confusion as to the level of
18 sophistication of the equipment and from where it came. I do
19 know what was requested in the budget, and as such, was
20 approved for purchase.

21 Q. Well, did you discuss with Dr. Karron, when you met him or
22 on telephone or in e-mail, as to the equipment that he was
23 utilizing to effect his research on this project?

24 THE COURT: At what point of time?

25 Q. At any point in time before the grant was suspended, from

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Lide - cross

1 October 2001 through June of 2003?

2 A. As I mentioned earlier, equipment was always an issue, and
3 that's why we were requesting modified budgets and
4 justification so that we could see exactly what existed, what
5 needed to be purchased.

6 Q. He had a budget that permitted him to spend money on
7 equipment, correct?

8 A. To a certain level, that is correct.

9 Q. And did you ever check the financials to see whether or not
10 he had spent the money on equipment?

11 A. The interesting thing is technical project managers --

12 THE COURT: Objection -- answer yes or no.

13 A. I'm not privy to those financials.

14 Q. Now, on direct examination you alluded to in Exhibit 2,
15 page three relating to the disposition of equipment, correct?

16 A. Yes, sir.

17 Q. And, in fact, the government permits the grantee, who
18 purchases the equipment, to retain the equipment, right?

19 A. To request to retain the equipment.

20 Q. And, in fact, the request is virtually always granted,
21 correct?

22 A. I don't know. It is usually granted.

23 Q. And, in fact, the grantee is not permitted to depreciate
24 this equipment because really it's the Government's equipment?

25 MR. KWOK: Objection.

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Lide - cross

1 Q. Are you aware of that or not?

2 MR. KWOK: Objection.

3 THE COURT: Is that so, that they're not permitted to
4 depreciate the equipment?

5 THE WITNESS: Um, I don't know in what sense.

6 I don't understand that question, as our terms and
7 conditions say that they have to account for it every two years
8 until it reaches less than 5,000. So that indicates to me that
9 it's being depreciated.

10 But as a project manager, I'm afraid I don't
11 understand how you are using the term depreciate, the company
12 depreciating it.

13 Q. Well, in other words, they have to account, so if they say
14 they still have the equipment, the government doesn't come and
15 take the equipment back, correct? I'll withdraw it.

16 Is it fair to say it's not theirs to sell, it's theirs
17 to use?

18 A. Yes.

19 Q. And it's theirs to use until it's not worth \$5,000 correct?

20 A. And as long as they're using it on the goals of the project
21 for which we gave them the award.

22 Q. But after it's not worth \$5,000, then they could keep it
23 right?

24 A. Correct.

25 Q. Now, CASI had equipment when they received the grants that

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Lide - cross

1 they owned prior to receiving the grants, did they not?

2 A. Yes.

3 Q. And there is a concept in co-funding that you could use
4 equipment or in kind, other than cash, as your contribution for
5 co-funding, correct?

6 A. Only to a certain level.

7 Q. But you can use it. In other words, if someone has
8 \$100,000 worth of equipment when the grant starts, they could
9 utilize that hundred thousand dollars to a percentage of the
10 hundred thousand as their contribution to the grants in lieu of
11 money?

12 A. No. It would not be a percentage of the hundred thousand.
13 It would be a percentage of the depreciation of the equipment,
14 for each year it was used for that project.

15 Q. And that would apply towards your co-funding as the
16 grantee, you would get credit for that?

17 A. With approval, yes.

18 Q. Now, in your presentation on November 8th, 2001, you
19 also -- this might be in the book.

20 MR. RUBINSTEIN: This is in Exhibit 4, not in the
21 binders that the jurors have.

22 THE COURT: Is that the proper page that's been shown,
23 procurement standards?

24 MR. RUBINSTEIN: Yes.

25 Q. Now, there has to be a written policies and procedures,

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Lide - cross

1 correct?

2 A. Yes.

3 Q. Was there any written -- did CASI have any written policies
4 and procedures?

5 A. I am not aware that they did.

6 Q. And in addition to that relating to fringe benefits,
7 there's supposed to be a manual created by the company?

8 A. There's supposed to be a document outlining them, yes, sir.

9 Q. And who creates that document?

10 A. The company.

11 Q. And who reviews that document?

12 A. Not the government.

13 Q. In other words, if an employer -- if CASI had a written
14 manual for fringe benefits in place, no one in the government
15 would review that document?

16 A. Not --

17 Q. Correct?

18 A. -- before the grant was given. It certainly could come
19 into an audit.

20 Q. Now, when was the last revision granted of the budget?

21 A. I can look up the date. It was the very very end of
22 January, the early days -- end of December, early January
23 between 2001 and 2002, and -- I'm sorry, and it's -- let's see.
24 Okay. It is signed by our grants officer on January 4th of
25 2002.

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Lide - cross

1 Q. What exhibit number is that, ma'am?

2 A. It is exhibit 22.

3 Q. Now, in that exhibit there is a reduction in amount of
4 salaries for employees, correct?

5 A. Yes, sir.

6 Q. And there is also a reduction in the total amount that
7 could be spent on fringe benefits, is that right?

8 A. Well, yes, and that makes sense because fringe benefits is
9 a percentage of salaries.

10 Q. So, is that anywhere in any literature that fringe benefits
11 is a percent of salary?

12 A. Well, it's -- yeah. I even it comes in the budget
13 narrative. If you look at the salaries and then the next block
14 says what are the fringe benefits and it says, you know,
15 34 percent or whatever.

16 Q. Can you pick your own percentage?

17 A. As long as it's -- well, can you pick your own percentage?
18 It clearly goes with the written document that you have that is
19 industry practice. We don't ask for detailed explanation or
20 breakdown if it's under 35 percent.

21 THE COURT: Is it a written policy of the company that
22 they have to present to you?

23 THE WITNESS: If they do not present it at award, it's
24 the honor system, but it does come to play when the company is
25 audited.

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Lide - cross

1 THE COURT: But it's the company's written -- the
2 company has to have adopted written policy.

3 THE WITNESS: Yes, sir, and that percentage is in
4 their budget documentation.

5 THE COURT: As opposed to the industry policy.

6 THE WITNESS: The companies should be in line with
7 other companies in that particular industry.

8 THE COURT: It has to be in writing.

9 THE WITNESS: The company's policy should be in
10 writing, yes, sir -- has to be, yes.

11 (Continued on next page)

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8637KAR5

Lide - cross

1 BY MR. RUBINSTEIN:

2 Q. Now, is it fair to say that from the end of 2001 going
3 through the summer of 2002 there were a lot of discussion about
4 budget revision between you and your agency and CASI?

5 A. That would be very fair.

6 Q. And who was -- were you involved in those discussions and
7 budget revision?

8 A. I was involved. I was certainly not alone in the
9 discussions.

10 Q. And who was involved? Was Lee Gurfein involved from the
11 CASI side?

12 A. Lee Gurfein was certainly involved. There were several
13 people involved during the course of events, and I don't recall
14 exactly the time frame for each of them, but Lee Gurfein was
15 one of them.

16 Q. And after Lee Gurfein, there was a fellow named Peter Ross?

17 A. I remember that name.

18 Q. And he was involved in submitting budget revision requests?

19 A. I believe so, yes, sir.

20 Q. The budget revision that is submitted, did they require the
21 signature of Dr. Karron?

22 A. Let's see. They did not -- they should have had either Dr.
23 Karron's signature or another recognized entity from the
24 company, which would have been Lee Gurfein.

25 Q. Now, you were trying to help CASI get these budget

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Lide - cross

1 revisions in, correct?

2 A. Absolutely. It is our goal to have every project succeed
3 if possible.

4 Q. And in fact you even sent -- in fact they even sent you at
5 one time the wrong report?

6 A. Sorry. They sent me what?

7 Q. The wrong report involved with the budget revision? You
8 had asked them for different documentation, correct?

9 A. Right.

10 Q. And do you know who would provide the documentation from
11 CASI?

12 A. As I said, several individuals supplied it. Frequently it
13 was Dr. Karron himself.

14 Q. And is it a fact that at times when you asked for
15 documents, the wrong documents were submitted?

16 A. I would have no way of knowing that unless informed by Dr.
17 Karron. As president, one would assume that he would review
18 the submissions.

19 Q. You know what they say when you assume.

20 THE COURT: Just --

21 MR. KWOK: Objection.

22 THE COURT: Let's just ask a question.

23 Q. Let me show you --

24 THE COURT: The jury is instructed to disregard the
25 last statement.

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Lide - cross

1 Q. Let me show you what has been marked as Government Exhibit
2 3501-FFFF and ask you if you can look at that and see if it
3 refreshes your recollection that you were supplied wrong
4 reports after a request for reports were made.

5 THE COURT: This is four F?

6 MR. RUBINSTEIN: FFFF, yes, your Honor.

7 Q. Does that refresh your recollection, ma'am?

8 A. This is an e-mail trail to my colleague that said some
9 report, wrong report. Jane opened some e-mail that said it was
10 the wrong report, and Jane and I in the subsequent e-mail were
11 trying to find time to meet. From this e-mail I have no clue
12 whether it's a financial report, a technical report. I'm
13 sorry, sir, but just "wrong report" doesn't tell me what kind
14 of report it was.

15 Q. Well, I only asked if they sent the wrong report. Whatever
16 you were looking for, their response was incorrect, correct?

17 A. And in most projects I would expect the right report to
18 follow.

19 Q. Now, you also, did you not, you wanted to get the actuals,
20 right?

21 A. Absolutely.

22 Q. The actual expenses that CASI had, correct?

23 A. After year one, actuals should have been available,
24 correct.

25 Q. And in fact you informed CASI in October and November of

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Lide - cross

1 2002 that you wanted to get the information back so that you
2 could expedite the approval.

3 A. It was our understanding that CASI wanted a revised budget,
4 and we were looking for the appropriate documentation to allow
5 us to recommend approval.

6 Q. And who did you understand was responsible for giving the
7 actual expenses of CASI?

8 A. That's not in my --

9 MR. KWOK: Objection.

10 THE COURT: Objection sustained. Let's move this on a
11 little bit, Mr. Rubinstein.

12 Q. When you were introduced to Joan Hayes, were you introduced
13 by Dr. Karron?

14 A. I don't recall. You don't want to hear the word assume, so
15 I won't assume anything. I do not recall.

16 Q. Do you recall being told by Dr. Karron that Joan Hayes was
17 his business mom?

18 A. Mom?

19 Q. Yeah, like mother.

20 A. No, I don't recall that, sir.

21 Q. Now, the audit is supposed to be submitted, is it not,
22 within 90 days of the end of the fiscal year for the
23 government?

24 A. The end of the first year of the project. It doesn't have
25 to do with our fiscal year.

8637KAR5

Lide - cross

1 Q. Well, this project ended September 30, 2002.

2 A. The first year of it did, yes, sir.

3 Q. First year. And an audit was due, right?

4 A. Correct.

5 Q. From an independent auditor, correct?

6 A. If that's the company's choice, that is correct.

7 Q. And were you involved in attempting to get the company to
8 comply and submit an audit?

9 A. Actually we have a separate department at NIST in the
10 grants office that's responsible for audits, and that's with
11 whom the company works if they need an extension or anything
12 like that.

13 Q. And did Dr. Karron suggest to you that you and Jane should
14 speak have a teleconference with Joan his auditor and
15 accountant about the actuals?

16 A. I don't recall, but we would need those actuals in writing
17 for any revision to the budget.

18 Q. Let me show you what is -- see if this refreshes your
19 recollection. I show you what has been marked as Government
20 Exhibit 3501-PPP.

21 THE COURT: Triple P?

22 MR. RUBINSTEIN: PPP.

23 Q. And 3501-KKK and 3501-LLL. Take a look at these documents
24 and see if it refreshes your recollection as to whether or not
25 Dr. Karron wanted you and your partner Jayne Orthwein to speak

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8637KAR5 Lide - cross

1 to Ms. Hayes his auditor and accountant.

2 A. Yes, these e-mails do seem that a conference call -- which
3 hopefully according to these e-mails would include Ms. Hayes --
4 is what's documented in these e-mails.

5 THE COURT: Well --

6 THE WITNESS: It sounds like from this large trail of
7 e-mail that Dr. Karron was suggesting a conference call and by
8 his own words it says hopefully Joan Hayes can join us.

9 THE COURT: That's all it says. The rest of his
10 question about employing an accountant, is that in there?

11 MR. RUBINSTEIN: Yes.

12 THE WITNESS: Well, I mean I will be happy to take the
13 time --

14 THE COURT: Show her the document.

15 MR. RUBINSTEIN: I will show her exactly where it is.

16 THE COURT: Let's move this along.

17 THE WITNESS: Thank you, because these are not in
18 chronological order.

19 MR. RUBINSTEIN: They are. They are not in letter
20 order. I had to put them in chronological order.

21 Q. Do you see where it's underlined?

22 A. I certainly do.

23 Q. Good.

24 A. So it says, "If appropriate, can I bring Joan our auditor
25 and accountant in for the meeting?"

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Lide - cross

1 THE COURT: What document is that?

2 MR. RUBINSTEIN: This is 3501-PPP, your Honor.

3 MR. KWOK: Objection. It's not in evidence.

4 MR. RUBINSTEIN: The judge asked me to identify the
5 document.

6 THE COURT: Do you recall that?

7 THE WITNESS: I mean my name is on the e-mail, so
8 therefore it's one of many e-mails. I do not recall.

9 THE COURT: Does it refresh your recollection?

10 THE WITNESS: No, sir, it does not.

11 THE COURT: The jury is instructed to disregard the
12 question and answer. It's not proper evidence.

13 Q. Then I will ask you, is this an e-mail that you sent,
14 3501-PPP, is this an e-mail that you sent on December 3, 2002
15 at 11:54? I'm sorry. Is this an e-mail that you received from
16 Dr. Karron on December 3, 2002, about 11:54 in the morning?

17 MR. KWOK: Objection.

18 THE COURT: Instead of referring -- if you want to put
19 those in evidence, move them into evidence.

20 MR. RUBINSTEIN: I do. OK. I move --

21 THE COURT: Don't approach it this way. Let's get it
22 over with and get it done.

23 MR. RUBINSTEIN: I offer into evidence Government
24 Exhibit 3501-PPP.

25 MR. KWOK: Objection.

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Lide - cross

1 THE COURT: On what ground?

2 MR. KWOK: The witness says she does not recall.

3 THE COURT: It doesn't matter, does it? Isn't this a
4 document kept in the regular course of business, these e-mails?

5 THE WITNESS: Yes, sir, we keep all of the e-mails.

6 MR. KWOK: Withdrawn.

7 THE COURT: Put it in evidence and then can you
8 display it to the jury. But let's move it along.

9 MR. RUBINSTEIN: I will just read a portion of it in
10 the middle of the page, it says, "Please relay your concerns to
11 myself and Peter." This is from Dr. Karron. "Once we have
12 NIST's approval, we will formally bring him onboard. When you
13 and Jayne are ready, we can have a teleconference if
14 appropriate. I can bring Joan our auditor and accountant in
15 for the meeting, and we can perhaps whack each audit issue dead
16 with all onboard one at a time like ducks in a row."

17 THE COURT: Give us a date.

18 MR. RUBINSTEIN: This is on December 3, 2002.

19 Q. Now, as a matter of fact, Ms. Lide --

20 THE COURT: So Defendant's A in evidence?

21 MR. RUBINSTEIN: Yes, your Honor.

22 (Defendant's Exhibit A received in evidence)

23 Q. You had requested that Dr. Karron speak on behalf of ATP at
24 conferences?

25 A. That is correct, we ask that of all of our recipients.

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Lide - cross

1 Q. And Dr. Karron did speak at conferences for you?

2 A. I believe at one he did. One he was unavailable, if I
3 remember correctly.

4 Q. And I think this morning you said that in fact there were
5 five different submissions for revisions that had different
6 numbers on them, correct?

7 A. I believe that was the number, yes.

8 Q. And in fact Dr. Karron requested -- withdrawn.

9 You had contact with a man named Bob Benedict, did you
10 not?

11 A. I do not recall contacting Bob Benedict personally, no,
12 sir.

13 Q. Do you recall being informed that he was the new business
14 manager for CASI?

15 A. I recall being informed that he would be joining the
16 company, but there was no prior approval that he was named as
17 the new business manager. I have no amendment showing me that.

18 Q. Well, was he ever approved?

19 A. To the best of my knowledge, no. There is no amendment in
20 my folder that says he was approved.

21 Q. But it is a fact that you had contact with Bob Benedict, he
22 on behalf of CASI and you on behalf of the ATP project.

23 THE COURT: Is that correct?

24 A. I know we had an e-mail from Bob Benedict. I'm not sure if
25 there were any phone conversations.

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Lide - cross

1 Q. In fact during the time that these various budget revisions
2 were being submitted, you had Dr. Karron present a paper at a
3 conference Where Medical Meets Virtual Reality, on March 22 and
4 23rd of --

5 THE COURT: What is the relevance of this,
6 Mr. Rubinstein?

7 MR. RUBINSTEIN: The relevance is that up until --

8 THE COURT: No, I don't want a speaking -- think about
9 it before you do it, and we can have a sidebar and allow it
10 later, but let's go ahead with the examination.

11 MR. RUBINSTEIN: I'm not going to spend the time to do
12 that, your Honor.

13 THE COURT: Let's ask the question then. Let's keep
14 to relevant questions.

15 Q. In fact in June of 2003 did you invite Dr. Karron to come
16 to NIST for a workshop?

17 THE COURT: I don't see the relevance of that either,
18 so I'm going to rule the objection sustained. Let's go ahead
19 with this case.

20 Q. Well, you had sent a letter, Exhibit 30 --

21 THE COURT: You can make an application later.

22 Q. Exhibit 30, you sent a letter in on April 16 outlining
23 problems that you were having with Dr. Karron and CASI,
24 correct?

25 A. I don't know. To whom did I send this letter? Oh, you

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Lide - cross

1 mean the one to the grants office?

2 Q. Right.

3 A. OK. No, all we said was we were having trouble reconciling
4 the year one actuals, and we were asking for an auditor's help.
5 Many of our audits -- in fact the majority of our audits have
6 very satisfactory endings. So, we did not say we were having
7 trouble with the company or Dr. Karron. We said we were having
8 trouble reconciling year one actuals. To me that's a big
9 difference.

10 Q. Well, on June 27 the grant was suspended, correct?

11 A. Correct.

12 Q. And that was on your recommendation, correct?

13 A. We recommended that, yes, that is correct.

14 Q. And four days earlier, before you made that recommendation,
15 on June 23, 2003 you invited Dr. Karron to a NIST workshop the
16 24th and 25th of June.

17 MR. KWOK: Objection. Correct?

18 THE COURT: I will allow the question.

19 A. Certainly, but they're mutually exclusive. At the time we
20 invited him, we did not know -- we did not have the information
21 that would cause us to suspend the award.

22 Q. What did you acquire between June 25 and June 27 that you
23 didn't have before?

24 A. Some information from the government auditor that he had
25 not satisfied a requirement of the grant.

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Lide - cross

1 Q. And you got that in writing?

2 A. I don't recall. I suspect -- I know there was a phone
3 call. There is probably an e-mail trail also. I know our
4 recommendation to the grants office to suspend was in writing.

5 THE COURT: That was when?

6 THE WITNESS: There is an e-mail that I'm sure someone
7 in this courthouse has. It was like maybe June 26.

8 THE COURT: Well, you wrote a letter.

9 THE WITNESS: No, I sent an e-mail, sir. It was about
10 June 26th. It was like the day of the suspension, perhaps the
11 day before.

12 Q. And the day before that you invited him to speak on behalf
13 of NIST, right?

14 A. Absolutely. We didn't have the information that would
15 cause us any reason to suspend.

16 Q. Now, are these grants on a cash or an accrual basis?

17 A. Are they a cash --

18 Q. In other words, are you familiar with the difference
19 between cash and accrual?

20 A. I'm afraid not. I'm a technical person. Sorry.

21 Q. OK. Now, at the time that the grant was suspended on June
22 27, 2003, are you aware whether or not Dr. Karron had
23 outstanding debts that he had incurred on behalf of the ATP
24 project?

25 A. I would have no knowledge of that, sir.

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Lide - cross

1 Q. And in fact Dr. Karron then communicated with Marilyn
2 Goldstein?

3 A. OK. She was the grants --

4 Q. Are you aware of that?

5 A. He should. She is our grants officer. She had signature
6 authority at the time for every amendment and his award, and
7 that would be very appropriate for him to communicate with her.

8 Q. And during all this time, in August and September, he is
9 attempting --

10 THE COURT: What year?

11 MR. RUBINSTEIN: September of '03.

12 Q. August, September, October '03 he is attempting to get the
13 grant restarted, correct?

14 A. That was his intent, to the best of our knowledge, correct.

15 Q. And he attempted to get in touch with you, correct?

16 A. Yes.

17 Q. And to have a meeting with you, correct?

18 THE COURT: With you?

19 THE WITNESS: I guess. I don't recall that. If there
20 is an e-mail, then, yes, that's true.

21 THE COURT: Well, did you get a letter or an e-mail
22 from him during that time, or are you answering you as regards
23 to the agency? It's important to make a distinction.

24 THE WITNESS: You as an agency I can attest got
25 communication. I got communication personally; I'm not sure

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Lide - cross

1 whether it was a phone call or an e-mail.

2 THE COURT: A communication to --

3 THE WITNESS: To work together to restart the grant,
4 which is of course what we would like to do. Our goal is to
5 make these grants successful, yes, sir.

6 Q. In fact, ma'am, on August 11, '03 Dr. Karron sent you and
7 Jayne an e-mail requesting to schedule a phone conference to
8 restart the grant.

9 THE COURT: Is that the question?

10 MR. RUBINSTEIN: Yes.

11 A. I don't recall the date, but, as I said, I had
12 communication with Dr. Karron, as did Jayne, on what to do to
13 restart the grant.

14 Q. Isn't it a fact that you received a communication on
15 September 4, '03 from Mark Stanley -- the acting director at
16 that time, and now the director of the project -- to you saying
17 that Dr. Karron wants a quick fix on a very complicated
18 problem? And you responded you will brief him?

19 A. I don't remember the words quick fix, but I do remember an
20 e-mail from Mark Stanley and a subsequent meeting.

21 THE COURT: Subsequent meeting between whom?

22 THE WITNESS: Between Mark Stanley and the project
23 team. Myself, Jayne Orthwein and either Hope Snowden and/or
24 Marilyn Goldstein or both.

25 THE COURT: Was Dr. Karron present?

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Lide - cross

1 THE WITNESS: No, this was an internal NIST meeting.

2 THE COURT: All right.

3 Q. Did Mark Stanley ask you for advice whether or not he
4 should meet with Dr. Karron on September 4, 2003?

5 A. I don't remember Mark Stanley asking me whether he should
6 meet or not. And we don't make those decisions for the
7 director, we just brief the director. So that would be his
8 decision after the briefing.

9 Q. And isn't it a fact that on October 14, 2003 Dr. Karron
10 sent you and Jayne Orthwein an e-mail asking when can we talk?

11 A. OK.

12 Q. Is that a fact?

13 A. We did have multiple communication. I'm sorry, I don't
14 remember the exact dates.

15 Q. But in fact the multiple communications were all Dr. Karron
16 asking you if he could sit down and talk to you about getting
17 the grant restarted, correct?

18 A. I do believe those communications were answered by us also.

19 Q. But is it a fact, ma'am, that he kept --

20 THE COURT: Were you stonewalling him?

21 THE WITNESS: No, we certainly were not, sir. Our
22 goal is to help these projects succeed, and that's why I am
23 sure we answered the communications.

24 Q. Did you ever meet him?

25 A. Did we meet him after that? No, we did not meet him.

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Lide - cross

1 THE COURT: Did you have a telephone conference.

2 THE WITNESS: I am sure we would have either e-mail
3 exchanges or telephone conferences or tell him to whom to go,
4 which at that point would have been the grants office.

5 THE COURT: It wasn't in your bailiwick; it was the
6 grants office?

7 THE WITNESS: That is correct. At that point it was
8 out of my hands and Jayne's hands, and it would have been in
9 the grants office that this would have to be resolved.

10 Q. In fact, the internal process of audit resolution was
11 stopped on this case.

12 A. That is not my department.

13 Q. But that's what happened. Whoever's department it was, the
14 civil audit resolution was stopped.

15 MR. KWOK: Objection.

16 THE COURT: Do you have personal knowledge of that?

17 THE WITNESS: No, I don't because I don't do audit
18 resolutions.

19 THE COURT: I'm just asking --

20 THE WITNESS: Yes, sir.

21 Q. Isn't it a fact --

22 THE COURT: The jury is to disregard the question
23 until we get an answer. This witness is apparently not in a
24 position to answer that.

25 Q. Let me show you what's been marked for identification as

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Lide - cross

1 Government Exhibit 3501-FF and ask you to review this document.

2 THE COURT: FF or SS?

3 MR. RUBINSTEIN: FF.

4 Q. See if that refreshes your recollection as to whether or
5 not you had knowledge that the auditing resolution was
6 suspended.

7 A. I was copied on this e-mail, so I guess I did have
8 knowledge. It was not my responsibility, so I didn't act on
9 it.

10 THE COURT: What's the date?

11 THE WITNESS: Friday, October 1, 2004.

12 MR. RUBINSTEIN: I offer that into evidence, your
13 Honor, Defendant's Exhibit B.

14 THE COURT: Defendant's Exhibit B is admitted in
15 evidence.

16 MR. KWOK: No objection.

17 (Defendant's Exhibit B received in evidence)

18 THE COURT: Do you want to publish it?

19 MR. RUBINSTEIN: I will read a portion of it, your
20 Honor. This is an e-mail from Rachel Garrison to Angela
21 McInnery, Marilyn Goldstein, cc'd to a number of people,
22 including Ms. Lide, and it says, "Additionally, please do not
23 proceed with audit resolution for CASI. It's extremely
24 important that a bill not be generated for the funds that CASI
25 misappropriated from the award."

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Lide - cross

1 I have no further questions, your Honor.

2 THE COURT: All right. Redirect.

3 MR. KWOK: Thank you, your Honor.

4 REDIRECT EXAMINATION

5 BY MR. KWOK:

6 Q. Ms. Lide, Mr. Rubinstein asked you a couple of questions at
7 the beginning of his cross-examination about a list of names.
8 Do you remember that line of questioning?

9 A. Yes, I do.

10 Q. Were any of these people involved in the day-to-day running
11 of the CASI grant, the ATP grant awarded to CASI?

12 THE COURT: As far as you know.

13 A. I don't remember the whole list, but the three that were
14 involved in the day-to-day would be Jayne Orthwein, myself and
15 Hope Snowden. I don't believe they were on your list.

16 Q. Ms. Lide, who had sole signatory authority at CASI while it
17 was receiving the ATP grant?

18 A. Dr. Karron.

19 Q. Did any of his business managers or auditors or bookkeepers
20 have signatory authority at any point?

21 A. No, we never got documentation to that, no.

22 Q. Ms. Lide, do you remember Mr. Rubinstein's questions about
23 the title 48 of the Code of Federal Regulation, 48 CFR?

24 A. Um-hum.

25 Q. And he asked you about certain questions about contract

8637KAR5

Lide - redirect

1 costs being able to be paid out of ATP funds. Do you remember
2 that?

3 A. I think so.

4 MR. KWOK: If we could publish to the jury what's
5 already in evidence as Government Exhibit 4, page 6.

6 I'm sorry. I gave the wrong number. It's Government
7 Exhibit 1, page 6.

8 THE COURT: I can't read it. Is this in the jury
9 book?

10 MR. KWOK: I believe so, your Honor.

11 THE COURT: Page 6?

12 MR. KWOK: If we could zoom into the top of paragraph
13 5.

14 Q. Could you read us the first sentence after just the second
15 heading?

16 A. "Regardless of whether they are allowable under the federal
17 cost principles, the following are unallowable under ATP:"

18 Q. What does the first of that phrase mean, "Regardless of
19 whether they are allowable under the federal cost
20 principles..."?

21 A. It means what's stated here overrules any other federal
22 cost principles.

23 Q. What in fact are the ATP rules regarding pregrant costs?

24 A. We do not pay any what we call sunk costs, which are costs
25 incurred before the start of the grant.

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Lide - redirect

1 Q. And on what occasions did you tell grant recipients that
2 rule, that you do not pay for pregrant costs?

3 A. That's told at bidders' conferences, via phone calls, in
4 the kick-off meeting, on our website. It's repeated.

5 Q. Ms. Lide, do you remember Mr. Rubinstein asking you about
6 the \$60,000 some odd dollars that Dr. Karron allegedly put into
7 CASI after the --

8 A. Yes, correct.

9 Q. Do you have any personal knowledge about what happened
10 there?

11 A. It is my -- I know that the grants office said that was not
12 an acceptable way to do it.

13 MR. RUBINSTEIN: I'm going to object. The question is
14 do you have any personal knowledge.

15 THE COURT: Objection sustained.

16 Q. Do you have any personal knowledge?

17 A. Yes, I do. The grants office said it was not acceptable,
18 it did not meet --

19 MR. RUBINSTEIN: I object to that and move to strike
20 it. It's hearsay.

21 THE COURT: Objection sustained, whatever the grants
22 office said. The jury is instructed to disregard the answer.

23 Q. Aside from what you might have heard from other people, do
24 you have any other personal knowledge about the \$60,000
25 infusion of cash into CASI?

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Lide - redirect

1 A. According to ATP rules --

2 THE COURT: No, no.

3 A. I have personal knowledge that it would not be accepted
4 because it was not accounted for for the ongoing research or
5 project.

6 Q. Miss Lide, did Dr. Karron or CASI ever get an approved
7 budget revision to allow so-called preparation costs, site
8 preparation costs?

9 A. No, no.

10 Q. How about any other renovation costs?

11 A. No. There was only the one approved budget that we have
12 discussed several times in December of '01. That was the only
13 revision to the budget that was approved.

14 Q. And what is the nature of those changes again to the
15 budget?

16 A. There were minor changes in equipment. It added a new line
17 to materials and supplies. It reduced salaries and therefore
18 fringe benefits but upped subcontracts.

19 THE COURT: That exhibit is what?

20 THE WITNESS: 22 I believe, if I remember. Yes, it's
21 22, sir.

22 MR. KWOK: If we could put up Government Exhibit 2,
23 page 3. If we could zoom into the top of paragraph 9. If you
24 could cut that in half so we could blow it up.

25 Q. Directing your attention to subparagraph A, what word is

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Lide - redirect

1 underlined there?

2 THE COURT: Subparagraph A of paragraph 9?

3 MR. KWOK: Yes, 9A.

4 THE COURT: All right.

5 Q. What word is underlined in that paragraph?

6 A. Annual.

7 Q. What does that say to you?

8 A. That the 10 percent refers to the total annual budget, not
9 the overall budget over the three years.

10 MR. KWOK: If we could put up Government Exhibit 4,
11 page 7. Sorry, I have the wrong page again. It's page 11
12 actually.

13 THE COURT: Of what?

14 MR. KWOK: It's page 11 of Government Exhibit 4.

15 THE COURT: Is that in the jury binder, or is that --

16 MR. KWOK: No, it's not, but it's now displayed on the
17 screen.

18 THE COURT: All right.

19 Q. Ms. Lide, do you remember Mr. Rubinstein asking you about
20 the second bullet point?

21 A. Yes.

22 Q. And you said that it was taken out of context --

23 A. Yes.

24 Q. -- what he was trying to say. What were you trying to
25 explain to us?

8637KAR5

Lide - redirect

1 A. I was trying to explain that several slides earlier had
2 said that any change in the budget had to be approved in
3 advance. What that is referring to is the overall project.

4 At the end of each year your technical goals might
5 change slightly. You might realize in subsequent years that
6 your estimated budget for year two and three were not correct,
7 and this is saying this is a good time to review that. In
8 fact, before we renew the proposals -- before we renew the
9 award and add year two, we ask if there are any such changes,
10 and that's to what that is referring.

11 Q. Just to be clear, the second bullet point there is not
12 overruling the prior approval requirement.

13 A. No.

14 MR. RUBINSTEIN: Objection to the leading.

15 THE COURT: What budget is contemplated by that second
16 bullet point?

17 THE WITNESS: It means look at your three-year budget,
18 and if you anticipate changes in year two or year three, this
19 is a good time to ask for approval of a new budget.

20 THE COURT: Is that gone into in the original meeting
21 with the grantee?

22 THE WITNESS: That's how -- this is not my slide. I
23 do not do this part of the presentation, but that's as I
24 interpret that. Several slides prior to this --

25 THE COURT: You have answered my question.

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8637KAR5

Lide - redirect

1 Q. Let's go back to page 7 of the same exhibit. How does the
2 slide that we just looked at relate to this slide?

3 A. Well, this slide clearly states prior approval --

4 MR. RUBINSTEIN: I object to this as improper
5 redirect, your Honor.

6 THE COURT: Objection overruled.

7 MR. RUBINSTEIN: I didn't ask anything about this.

8 THE COURT: I will allow it. But instead of doing
9 this, point to the section you are talking about, and then you
10 can explain.

11 Q. Directing your attention to the second bullet point, how
12 does that point relate to the point that we just looked at in
13 the previous slide?

14 A. That any time during year one that a new budget is
15 requested, it must be presented at the time of the request and
16 get prior written approval.

17 Q. Now, Ms. Lide, do you remember Mr. Rubinstein also asking
18 you about the purpose of not allowing ATP grant funds to be
19 expended on indirect costs? Do you remember that question?

20 A. I do.

21 Q. And he asked you whether one of the purposes of that rule
22 was so that sometimes a company might spend time on different
23 projects? Do you remember that?

24 A. I do.

25 Q. Are there any other purposes aside from that that ATP does

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8637KAR5

Lide - redirect

1 not pay for indirect costs? What was your understanding as to
2 why ATP does not pay for indirect costs?

3 A. Well, the first understanding is that that is the way that
4 a single company cost shares with the U.S. government.

5 The second understanding is that if the company has no
6 indirect costs to share, it may not be a viable company.

7 And the third reason would be that any company, no
8 matter how small, engages in other activities than the ATP
9 project. For example, in CASI's case they were looking for
10 funding from other entities, that would be activities outside
11 of the ATP project.

12 Q. Ms. Lide, let's go back to Government Exhibit 4. You
13 remember Mr. Rubinstein showing you the font at the upper
14 left-hand corner of the slide and you were trying to explain?

15 A. I do.

16 Q. What is that explanation?

17 A. Yes. The explanation is that we work as a team. Two of us
18 are from Advanced Technology Program, one of us is from the
19 grants office; and because we have different knowledge of parts
20 of this grants, we all put these slides together with our
21 knowledge. So, the larger font came from the grants person.
22 She created her own slides because she has the intimate
23 knowledge of that. Those of us in the Advanced Technology
24 Program created our own slides using a smaller font. Our goal
25 isn't to have the prettiest slide set; it's to give the

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8637KAR5 Lide - redirect

1 information to the company.

2 Q. You remember being asked a question about the "in kind"
3 contribution and how it relates to the cost share?

4 A. Yes, I do.

5 Q. You remember him asking you about the limit that can be
6 done?

7 A. Yes.

8 MR. KWOK: May I approach, your Honor?

9 THE COURT: Yes, you may.

10 Q. I am showing you a document to see if that refreshes your
11 recollection.

12 MR. RUBINSTEIN: I object. She didn't indicate that
13 she needs it.

14 THE COURT: I don't know what the document -- I
15 haven't gotten anything on this.

16 (Record read)

17 THE COURT: You can show a document to see if it
18 refreshes her recollection.

19 (Record read)

20 THE COURT: You need another question in there,
21 Mr. Kwok.

22 Q. Do you know the percentage limit where that can be done,
23 the "in kind" contribution can be considered as part of the
24 cost share?

25 A. I believe it is a third, but I would like to be refreshed

8637KAR5 Lide - redirect

1 if possible.

2 MR. KWOK: Your Honor?

3 THE COURT: All right.

4 MR. RUBINSTEIN: I think it's inappropriate, your
5 Honor. It's absolutely inappropriate.

6 THE COURT: She says --

7 MR. RUBINSTEIN: They have a document that she never
8 saw before. How can she be refreshed?

9 THE COURT: I don't know whether it's a document she
10 has seen before or not.

11 MR. RUBINSTEIN: Well, I think they have to ask her.

12 THE COURT: You have to ask her whether she has seen
13 this document before.

14 MR. KWOK: Maybe a few questions, your Honor.

15 THE COURT: You can show her the document and ask her
16 if she has seen it before. She can't tell unless she looks at
17 it.

18 MR. RUBINSTEIN: He should show her the first page
19 only.

20 THE COURT: All right, just the first page.

21 THE WITNESS: Yes, I have seen that document.

22 THE COURT: All right. Let her look through the
23 document. Let her look through the document.

24 THE WITNESS: I should have confidence in myself. The
25 total value of any "in kind" contributions used to satisfy the

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8637KAR5

Lide - redirect

1 cautionary requirement may not exceed 30 percent of the
2 nonfederal share of the total project costs. And I had said a
3 third.

4 THE COURT: You remember that of your own knowledge,
5 not just reading it.

6 THE WITNESS: No, no, sir, I answered -- I believe you
7 would find it -- I said I believed it was a third, so ...

8 Q. Ms. Lide, you remember Mr. Rubinstein asking you questions
9 about multiple communications to NIST, including yourself, from
10 Dr. Karron?

11 A. I do.

12 Q. After the grant was suspended, what was the reason that you
13 yourself stopped meeting with him?

14 A. At the beginning -- we were instructed by our general
15 counsel to stop meeting with him after the suspension of the
16 award.

17 MR. KWOK: May I approach, your Honor?

18 THE COURT: Yes, you may.

19 Q. I am showing you what's been marked as Defendant's Exhibit
20 I believe 2, 3501-FF?

21 DEPUTY COURT CLERK: That's B.

22 THE COURT: B as in boy.

23 Q. Ms. Lide, Mr. Rubinstein asked you a moment ago to read a
24 portion of that e-mail. Can you read the e-mail in its
25 entirety?

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8637KAR5

Lide - redirect

1 THE COURT: Actually what he read -- he read a portion
2 of it.

3 Q. He read a portion of it. Can you read the entirety of that
4 e-mail?

5 A. Certainly. The date is October 1, 2004. "The Department
6 of Justice has formally initiated a grand jury investigation
7 regarding the NIST ATP award made to Computer Aided Surgery.
8 In order to ensure that DOJ and the Inspector General's office
9 are able to complete a thorough and timely investigation, we
10 are requesting that all NIST" -- "all" is all in caps -- "NIST
11 personnel cease contact with Computer Aided Surgery (CASI), Dr.
12 Karron and all CASI representatives. Inquiries from those
13 parties should be directed to myself or SA Kirk Yamatani.
14 Additionally" --

15 Shall I continue?

16 Q. Yes.

17 A. "Additionally please do not proceed with the audit
18 resolution for CASI. It is extremely important that a bill not
19 be generated for the funds that CASI misappropriated from the
20 award. Please contact me if there are any further concerns or
21 questions. I look forward to working with all of you over the
22 next few months. Thank you."

23 Q. And who wrote that e-mail?

24 A. Rachel A Garrison, special agent.

25 THE COURT: For the Department of Commerce?

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8637KAR5

Lide - redirect

1 THE WITNESS: Sorry. Yes, United States Department of
2 Commerce.

3 Q. And do you see Rachel Garrison in this courtroom?

4 A. I do.

5 Q. Can you point her out?

6 A. She is at the front table with a dark suit and a blue
7 blouse under it.

8 MR. KWOK: No further questions.

9 THE COURT: Recross.

10 MR. RUBINSTEIN: Yes, your Honor.

11 RECROSS EXAMINATION

12 BY MR. RUBINSTEIN:

13 Q. Is it fair to say that --

14 MR. KWOK: Objection.

15 THE COURT: Let's rephrase the question.

16 Q. Thank you, Judge.

17 Are you -- is cofunding part of your job? Are you
18 involved in cofunding and advise on cofunding?

19 THE COURT: I don't --

20 A. No, I don't believe it is.

21 THE COURT: I don't see the relevance of this.

22 MR. RUBINSTEIN: He just asked her on cross. He
23 showed her a document.

24 Q. Didn't you say when you first answered that question that
25 it was one third -- that one third?

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Lide - recross

1 A. It is our responsibility to the best of our knowledge to
2 understand the rules and criteria and to advise our recipients,
3 and when in doubt our expert is our grant specialist who works
4 with us on the project.

5 Q. Isn't it fair to say that your answer was, before you were
6 shown the document, that it's about a third of the budget?

7 A. No, definitely not of the budget, absolutely not. Of the
8 cost share.

9 Q. Now?

10 THE COURT: The cost share being the costs put up by
11 the grantee?

12 THE WITNESS: That is correct, sir. Yes.

13 Q. Now, sunk cost is a term you used, correct?

14 A. Um-hum.

15 Q. Is that right?

16 A. Correct.

17 Q. Is that what you said?

18 A. Correct, we use the term sunk cost.

19 Q. And that is costs that a grantee spends before they
20 actually get the grant money.

21 A. Before the start of the grant.

22 Q. Before. That they actually spend the money. They paid for
23 the expense. They buy a computer on September 29th and they
24 pay for that computer that they're going to start using after
25 October 1st for the purposes of that grant, that's a sunk cost,

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Lide - recross

1 right?

2 A. If they paid for it, yes, it is a sunk cost. Anything they
3 purchase, yes.

4 Q. You just said they paid for?

5 A. Or, well, if they order it. They can't order it before the
6 start of the grant and then charge ATP. They ordered it before
7 the grant.

8 Q. Isn't it a fact they can't pay for it before the grant and
9 get reimbursed, but if they charge it and pay for it after they
10 get the money, then that is acceptable?

11 A. It certainly wouldn't be, in my opinion, but the grants
12 office would have to answer that question more accurately.
13 It's my understanding that it was entered into before the start
14 of the grant and therefore regardless of when you paid for it
15 it would be a sunk cost.

16 Q. The government showed you Government Exhibit 4, page 11.

17 Could we have that up, please?

18 MR. RUBINSTEIN: It's the one that the government
19 showed the witness on redirect.

20 THE COURT: That's what you want up, Mr. Rubinstein?

21 MR. RUBINSTEIN: Yes.

22 THE COURT: All right.

23 Q. Anywhere in that exhibit does it address a three-year
24 budget?

25 A. That's what's meant by a revised budget.

8637KAR5

Lide - recross

1 THE COURT: But does it state it in the --

2 THE WITNESS: No, it does not state a three-year
3 budget.

4 Q. Does it specifically say the costs of each year?

5 A. Yes.

6 Q. Now you were asking for the actual costs of CASI in order
7 to help CASI get a revised budget, correct?

8 A. Yes.

9 Q. And anywhere in your exhibit 4, the slide presentation, is
10 there anything about cofunding and equipment?

11 A. I would be happy to go through this.

12 Well, certainly the page that says "adhere to terms
13 and conditions and related award documents," lists things that
14 would address equipment.

15 The prior approval says sole source contracts over
16 \$100,000. That would relate to equipment.

17 The next slide says report changes and equipment use.
18 That certainly affects equipment.

19 The procurement standards relates to equipment and how
20 one purchases it with competing procurements and documenting.

21 The budget slide, of course equipment plays a big role
22 in the budget, especially in a project such as this.

23 The audit would have to audit the equipment.

24 An audit problem is estimated versus actual costs
25 requested or failure to document cost share. Both of those

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Lide - recross

1 could -- a price-based value of contribution, all of those
2 could relate to equipment, if that's what's in question.

3 And I suspect it won't be under the technical and
4 business project management, so --

5 Q. So, it's fair to say there is no place in your slide
6 presentation that says you can only use equipment up to 30
7 percent as to nonfederal expenses, right? There is nothing
8 that says that.

9 A. Not in that document, but it occurs in many other
10 documents.

11 Q. Not in the slide show though?

12 A. Not in the slide show directly.

13 Q. And the government asked you questions about Defendant's
14 Exhibit B. You received this e-mail on October 4, 2004. Did
15 you ever tell Dr. Karron in all the times he e-mailed you or
16 called you that you can't speak to him and that he should be
17 directed to either Rachel Garrison herself or special agent
18 Kirk Yamatani? Did you ever tell Dr. Karron that that's what
19 you were advised to do?

20 A. Those were not my instructions. My instructions were
21 inquiries from Dr. Karron should be referred to those special
22 agents. My instructions were to cease contact. And I follow
23 instructions.

24 Q. Did you tell him you can't talk to him month after month?

25 THE COURT: Did you have any of these inquiries to

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8637KAR5 Lide - recross

1 those people?

2 THE WITNESS: Yes. My instructions were to send
3 e-mail --

4 THE COURT: But did you follow your instructions?

5 THE WITNESS: Absolutely to the letter.

6 THE COURT: All right.

7 THE WITNESS: Yes.

8 (Continued on next page)

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863ZKAR6

Lide - recross

1 BY MR. RUBINSTEIN:

2 Q. Did you ever notify Dr. Karron that you had been instructed
3 to send all his inquiries to Agents Garrison and Yamatani, if
4 I'm pronouncing his name correctly?

5 A. I'm a government employee and I was following my
6 instructions from the U.S. Government.

7 Q. So you had Dr. Karron keep calling you and begging you to
8 see if he could get his grants restarted; right?

9 MR. KWOK: Objection.

10 A. No.

11 THE COURT: Objection sustained. Jury is instructed
12 to disregard the question.

13 You're excused. Next witness, bring him on.

14 MR. EVERDELL: Your Honor, the government calls Hope
15 Snowden.

16 HOPE DENISE SNOWDEN,

17 called as a witness by the government,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. EVERDELL:

21 MR. EVERDELL: May I proceed, your Honor?

22 THE COURT: Yes.

23 Q. Good afternoon, Ms. Snowden.

24 A. Good afternoon.

25 Q. Where do you work?

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Snowden - direct

1 A. I work at the National Institute of Standards and
2 Technology in Gaithersburg.

3 Q. Is that sometimes called NIST?

4 A. Yes.

5 Q. For short? And is NIST part of the federal government?

6 A. Yes.

7 Q. And what part?

8 A. The Department of Commerce.

9 Q. What is your title at NIST?

10 A. Grants specialist.

11 Q. And how long have you been a grants specialist?

12 A. About eight-and-a-half years.

13 Q. What do you do as a grants specialist?

14 A. I administer grants.

15 Q. So can you describe a little bit what you do, your
16 responsibilities?

17 A. I do like budget revisions. I administer -- I administer
18 the grants when -- pertaining to the rules and regulations. I
19 explain to the grantees what are allowable and unallowable
20 costs.

21 Q. Do you have any responsibilities concerning budgets for
22 grants?

23 A. Yes. I review the budget for the grants, although at the
24 end of the day my supervisor, her signature her -- with an
25 amendment and her official signature, that's how our budgets

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Snowden - direct

1 are approved.

2 Q. Do you know B. J. Lide or Betti Jo Lide?

3 A. Yes, I do.

4 Q. And who is that?

5 A. They're program managers, and we partner up with ATP
6 grants.

7 Q. How does your job differ from Ms. Lide's job?

8 A. B. J. is on a more technical aspects of the grants. I'm on
9 more than administrative and like budget analysis, and my
10 office does all the approvals that have to be authorized and
11 signed for by the grant officer.

12 Q. What did you do before becoming a grant specialist?

13 A. I was a procurement analyst for United States.

14 Q. And how long did you do that for?

15 A. Nine years.

16 Q. Are you familiar with the advanced technology program
17 grant?

18 A. Yes.

19 Q. Or ATP grants?

20 A. Yes.

21 Q. Have you been involved as a grants specialist with ATP
22 grants in the past?

23 A. Yes, I have.

24 Q. And about how many ATP grants have you been a grant special
25 list for?

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Snowden - direct

1 A. Well, over 60.

2 Q. In your capacity as a grants specialist for the ATP grants,
3 are you familiar with the rules governing the ATP grants?

4 A. Yes, I am.

5 Q. And are you familiar with the rules governing government
6 grants, in general?

7 A. Yes.

8 Q. How are you familiar with those rules?

9 A. I'm a grants specialist and, therefore, part of my position
10 of my job is to be familiar with those rules and regulations
11 that govern the grants.

12 Q. And those rules include spending rules?

13 A. Spending rules, unallowable and allowable costs.

14 Q. All right. Ms. Snowden, did there come a time when you
15 were involved in handling, excuse me, in handling an ATP grant
16 awarded to Computer Aided Surgery Incorporated or CASI?

17 A. Yes.

18 Q. And who is the head of CASI?

19 A. Dr. Karron.

20 Q. Do you see Dr. Karron here in the courtroom?

21 A. Yes, I do.

22 Q. Would you please point him out and describe an article of
23 clothing he's wearing?

24 A. With the glasses on, tie, and jacket.

25 MR. EVERDELL: May the record re --

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863ZKAR6

Snowden - direct

1 MR. RUBINSTEIN: I concede she's identified --

2 A. He has --

3 MR. RUBINSTEIN: -- Dr. Karron.

4 A. He has something in his hand -- there he is, has a pony
5 tail. That's him, yes.

6 MR. EVERDELL: May the record so reflect the witness
7 has identified the defendant?

8 THE COURT: The record will reflect the witness has
9 identified the defendant.

10 Q. Ms. Snowden -- excuse me, your Honor.

11 Ms. Snowden, what position did the defendant occupy
12 within CASI?

13 A. He's the president.

14 Q. And when did you first meet the defendant?

15 A. I met him November 2001.

16 Q. And what was the occasion for that meeting?

17 A. He came to NIST, him and his associates, to what we call a
18 kickoff meeting. That's when you're awarded a federal funded
19 grant, you come to our location -- well, usually we go to your
20 location. But since 9/11 they came to our location. And we
21 have a -- give a presentation, and we go through rules and
22 regulations that govern the grants and go over what their
23 responsibilities are, our responsibilities to them, and then
24 they give us like a presentation of what they expect to
25 accomplish throughout the proposal.

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Snowden - direct

- 1 Q. And you say that's a kickoff meeting?
- 2 A. It's called a kickoff.
- 3 Q. And what grants did Dr. Karron and CASI receive at that
- 4 point?
- 5 A. A federal funded grant with federal funds.
- 6 Q. Was it an ATP grant?
- 7 A. Through ATP, yes, ATP program.
- 8 Q. And when was that grant approved?
- 9 A. The grant was approved in October 2001.
- 10 Q. How much funding was authorized for that grant?
- 11 A. \$2 million.
- 12 Q. And how is the two million going to be disbursed?
- 13 A. Over three year period, the first year being 800,000, and
- 14 second year 600,000 and third year 600,000.
- 15 Q. And where did money come from that funded the grant?
- 16 A. Federal appropriations, federal -- it's a federal grant.
- 17 Q. Now, you mentioned kickoff meeting before. When, again,
- 18 did that kickoff meeting occur?
- 19 A. It was in November 2001.
- 20 Q. So how long after the grant was approved did the kickoff
- 21 meeting happen?
- 22 A. Probably within like six weeks.
- 23 Q. Now, prior to the kickoff meeting, did you have any
- 24 conversations with anyone from CASI?
- 25 A. Yes, yes.

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863ZKAR6

Snowden - direct

1 Q. Who did you have conversations with?

2 A. Dr. Karron and his associate, Lee Gurfein.

3 Q. And who is Lee Gurfein?

4 A. Lee Gurfein, under this proposal, was an administrator
5 under this proposal.

6 Q. And what does an administrator do?

7 A. Usually they do all the administrative work. He would call
8 me to ask me questions for about allowable and unallowable
9 costs, just about any changes or changes that they propose;
10 just questions.

11 Q. Is he the point of contact?

12 A. He was the point of contact, yes.

13 Q. All right. Starting first with your conversations with Lee
14 Gurfein, did he contact you or did you contact him?

15 A. He contacted me.

16 Q. And why did he contact you?

17 A. He contacted me to ask me about unallowable and allowable
18 costs. He -- for example --

19 MR. RUBINSTEIN: Objection to the hearsay, your Honor.

20 MR. KWOK: Your Honor, these are questions, they're
21 not statements.

22 THE COURT: Objection sustained as to why he contacted
23 her. She can state what he said in the conversation and what
24 she said in the conversation, but she can't testify as to what
25 is in his mind.

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863ZKAR6

Snowden - direct

1 MR. EVERDELL: Yes, your Honor. Understood.

2 Q. All right, Ms. Snowden, let me ask you this question. You
3 said he contacted you, is that right?

4 A. Yes.

5 Q. Did you two have a discussion?

6 A. Yes.

7 Q. What questions did he ask you, if any, during that, those
8 conversations?

9 A. Was he allowed to pay for rent and utilities, with the ATP
10 federal funded grant.

11 Q. And rent for what, rent and utilities for what?

12 A. For the condo in which the -- at this point I guess CASI,
13 the company, was being housed.

14 Q. And whose condo was that?

15 A. Dr. Karron's condo.

16 Q. And what was your response to the question, can rent and
17 utilities be paid for with ATP funds?

18 A. No, they're unallowable costs.

19 Q. And why is rent not, and utilities not allowable cost?

20 A. For one thing, they're considered indirect costs, and
21 they're -- indirect costs for us is general and administrative
22 costs like water, electricity, heat, something that ATP and
23 federal funds we do not pay for.

24 Q. Now, something like rents and utilities be an allowable
25 expense under the grant rules if the only project that the

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863ZKAR6

Snowden - direct

1 grant was recipient was working on was the project that was
2 funded by the ATP money?

3 A. No.

4 Q. It wouldn't make any difference?

5 A. It makes no difference at all.

6 Q. What if the defendant was living in the apartment where the
7 company was housed, would that make any difference whether
8 grant money could be used for rent?

9 A. No, not at all.

10 Q. All right. Now, turning to your conversations with the
11 defendant, did he contact you or did you contact him?

12 A. He contacted me.

13 Q. And why -- oh, withdrawn, your Honor. Did you two have a
14 conversation?

15 A. Yes.

16 Q. And what did you talk about?

17 A. He had the same conversation -- question as Lee Gurfein.

18 Q. Which was what?

19 MR. RUBINSTEIN: Can we establish a time, your Honor,
20 with these conversations?

21 THE COURT: Yes. Approximately when did these
22 conversations take place, approximately?

23 THE WITNESS: Oh, this is -- they first started taking
24 place before the kickoff. So that's in October of 2001.

25 THE COURT: This is about the rent?

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863ZKAR6

Snowden - direct

1 THE WITNESS: This is about the rent and utilities.
2 This is right after he was told that he -- he received the
3 documents that he would be receiving this federal fund, and
4 then it continued.

5 THE COURT: All right. Then the next conversation you
6 said that was with Gurfein. What about the conversation
7 with --

8 THE WITNESS: They --

9 THE COURT: -- Dr. Karron?

10 THE WITNESS: They both would call me, just --

11 THE COURT: Same time?

12 THE WITNESS: Yeah. No, like a different day. Like
13 Lee would call me one day, and then Dr. Karron would call me
14 another day and ask the same exact question.

15 THE COURT: They both were all in October?

16 THE WITNESS: No. Some were in October, and then
17 later on after the kickoff, they continued to call me and ask
18 me the same exact questions.

19 THE COURT: All right.

20 THE WITNESS: Okay.

21 Q. All right. Again, just to clarify the conversations with
22 the defendant, we discussed your conversations with Lee
23 Gerfein, but what did you two discuss, you and the defendant?

24 A. We discussed rent and utilities.

25 Q. And what specifically did the defendant ask you?

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1 A. He asked me were there allowable cost, and I told him over
2 and over again, no. He also -- we had a conversation about --
3 during this time was 9/11, and the State of New York had told
4 them they would give him some space. And I guess, I don't know
5 what agreement they had, but since 9/11 they rescinded the
6 offer. So, therefore, he was inside of his apartment. I said
7 I understand this, but I'm sorry; unfortunately, federal
8 funding grants, we do not pay for rent and utilities, so
9 therefore, the answer was no, time and time again.

10 Q. And about how many times were you contacted about this?

11 A. Numerous times. Between Lee and Dr. Karron, they would tag
12 taking team. They would both call me and ask the same
13 questions like a day apart, and they would consistently get the
14 same exact answer.

15 Q. What answer was that?

16 A. They were unallowable costs and, no, you can not use
17 federal funds.

18 Q. Did you ever tell the defendant or Lee Gerfein that rent
19 and utilities were allowable expenses under the ATP funds?

20 A. Never.

21 Q. Did you ever approve any rent or rent payment requests from
22 the defendant or anybody at CASI?

23 A. No, never.

24 Q. All right. Aside from calling you with questions, were
25 there any resources available to the defendant to instruct him

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1 about the rules governing the expenditure of grants funds?

2 A. Yes.

3 Q. And what are those?

4 A. You have, you have ATP rules. You have a management.

5 Under the federal government, you have regulations and the

6 regulations you have -- you have to you have to have written

7 proper management procedures in place. So, yes you have rules.

8 Q. Are there ways that the defendant would be able to access

9 these rules at any point?

10 A. Yes. There is more than one way. When you receive a grant

11 from us when you receive a document, even before you sign it

12 say you're going to accept it, we send that document, along

13 with all the regulations that govern the award, also there are

14 internet, on the internet you can always access them through

15 the internet.

16 Q. And did you in fact send these regulations to the defendant

17 when he was awarded the grant?

18 A. Yes.

19 Q. I'd like to show you what's already in evidence as

20 government exhibit 12, and if we could display that on the

21 screen. I know the folders are jumbled, but if you could find

22 exhibit 12.

23 A. Okay.

24 Q. You see that document?

25 A. Yes.

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1 Q. Do you know what that document is?

2 A. Yes.

3 Q. What is that?

4 A. When a recipient is going to receive a federal fund, they
5 will receive this document. This document, it -- basically, it
6 tells you to -- it outlines the period of performance and how
7 much money you're going to receive, and it also has every
8 regulation and rule checked that governs your award.

9 Q. And are there regulations and rules that are checked on
10 this one?

11 A. Yes.

12 Q. And is this the one that was sent to Dr. Karron and CASI?

13 A. Yes.

14 Q. And these checked items, do you see the ones that are
15 there?

16 A. Yes.

17 Q. All right. And they include -- which ones do they include?

18 A. They include Department of Commerce, financial assistance
19 standards terms and conditions. You have your special award
20 conditions, line item budget, 15 CFR part 14, uniform
21 administrative requirements for grants and agreements with
22 higher -- institutions of higher education hospitals, other
23 nonprofit and commercial organizations; 48 CFR part 31,
24 contract cost principles and procedures. And then we have
25 others. And others are the general terms, conditions of

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1 Advanced Technology Program, and you have programs specific
2 guidelines for the ATP cooperative agreements with single
3 companies.

4 Q. And were these documents sent along with the grant award?

5 A. Yes.

6 Q. And whose signature appears on the bottom of that?

7 A. D. B. Karron.

8 Q. And in signing that, what is the signatory agreeing to do?

9 A. When you sign this, you're -- you're -- by signing this
10 document, you simply agree to comply with the awards provisions
11 checked below. Upon acceptance of double signed copy, you're
12 saying that you're not only signing these, that you're
13 accepting them, but you understand these rules and regulations
14 that govern your award.

15 Q. All right, let's discuss now the kickoff meeting that you
16 mentioned before. What is the kickoff meeting?

17 A. A kickoff meeting is when the federal Government and the
18 program side of the house and the recipient, that the person
19 receiving the grants, we come together and we gave a
20 presentation. The presentation outlines the rules and
21 regulations of the grant, what you expect to receive from us,
22 and our responsibilities and your responsibilities to us.

23 It also -- also, the grantee is able to give us a
24 presentation of what he expects to accomplish in the proposal.
25 So, basically, it's a time where we come together you can see

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1 each other face-to-face and, basically, you could talk and be
2 more familiar with each other.

3 Q. And who attended the kickoff meeting from CASI?

4 A. I recall Dr. Karron and Dr. Lee Gerfein -- and Lee Gerfein.

5 Q. And who on behalf of NIST was there?

6 A. B. J. Lide, Jane Orthwein and myself, Hope Snowden.

7 Q. And what does the NIST grant office hope to achieve at this
8 kickoff meeting?

9 A. We hope to give you a nice outline and tell you about the
10 rules and regulations. I explain to them every time that I'm
11 their liaison for the grants office. I mean, you have these
12 rules and regulation. If you don't understand them, don't try
13 to interpret them yourself. That's what I'm there for. You
14 call me and I'll help you out, and if I don't know the answer,
15 I'll definitely go find out what it is.

16 Q. What was your role at the kickoff meeting?

17 A. I represent the grants office.

18 Q. Did you give a presentation there?

19 A. Yes, I did.

20 Q. All right. I'd like you to look at Government's exhibit 4
21 which is in evidence, if you can find that folder?

22 THE COURT: You have the full exhibit, is that it?

23 MR. EVERDELL: The witness has the full exhibit and I
24 will direct her.

25 THE COURT: The jury just has the extract.

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1 MR. EVERDELL: Jury just has the extracts, that's
2 correct, your Honor.

3 Q. Do you see that document in front of you?

4 A. Yes.

5 Q. And what is that document there?

6 A. This is a copy of the presentation that I, that I gave at
7 the kickoff.

8 Q. I'd like you to turn to page six of that document?

9 A. Okay.

10 Q. Put that up on the screen. I'm not sure the jury has page
11 six. You see that page?

12 A. Yes.

13 Q. Is that part of the presentation you gave?

14 A. Yes.

15 Q. And what is, what is this slide designed to impart to the
16 people present?

17 A. This is to reiterate the rules and regulations and as it
18 says, terms conditions and regulations that govern this award.
19 So I usually go over this slide and tell them that these are
20 the rules and regulations that not only govern each one
21 supersedes, like you have your special award conditions, your
22 ATP general terms and conditions and so forth.

23 Q. Did you tell them if they have any questions what they can
24 do?

25 A. If they have any questions, they have to call me. I'm the

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1 grant liaison, call me.

2 Q. Can they question you about any questions about the rules

3 and regulations that are outlined here?

4 A. Yes, yes.

5 Q. Is it your job to respond to those questions?

6 A. That is my job to respond.

7 Q. What, if anything, do you tell the people present at the,

8 or did you tell the CASI people present at their kickoff

9 meeting about their responsibilities concerning their proposal?

10 A. I usually give my spiel, and it's like -- and I tell them,

11 I said your proposal's like your Bible; you don't go outside of

12 the other guidance of your proposal. Anything outside there,

13 you need to have prior approval. So your proposal, you must

14 follow it.

15 Q. And what specifically did you tell them, if anything, about

16 their responsibilities concerning their budget?

17 A. The budget that's approved within your proposal, that's

18 your own approved budget. Anything outside that, you need,

19 prior approved -- you need prior approval. Part of that prior

20 approval is never verbal. It always comes in a signed document

21 signed by my grant officer.

22 Q. All right. So just to be clear, if you want to get prior

23 approval -- if you want to get prior approval for a change in

24 your budget, can you get it orally?

25 A. No.

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1 Q. Have you ever granted something, a change in the budget
2 orally?

3 A. No.

4 Q. So these are written approvals, is that right?

5 A. That's it. That's the only how you can get approval.

6 THE COURT: This is what you told them at the time of
7 the meeting?

8 THE WITNESS: Yes.

9 Q. I'd like you to look at page 11 of that same exhibit that's
10 not in the jury binders, but we have been discussing it. So
11 you have to look up on the screen, Ms. Snowden even -- oh, I
12 suppose you have a full exhibit. Yes, you can turn to page 11.

13 A. Okay, I have it.

14 Q. All right. You see that page their?

15 A. Yes.

16 Q. It says budgets?

17 A. Uh-huh.

18 Q. Is this part of the presentation that you gave as well?

19 A. Yes.

20 Q. And you see that second, I guess bullet point, review costs
21 at the end of each year and submit a revised budget and
22 narrative if changes have occurred or has occurred?

23 A. Yes.

24 Q. Can you explain what you mean what you mean by that bullet?

25 MR. RUBINSTEIN: Objection, your Honor.

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1 THE COURT: Objection sustained. It's what she said
2 at the meeting that's binding.

3 Q. Did you discuss anything at the meeting about that bullet?

4 A. Yes.

5 Q. What did you discuss at the meeting about that bullet?

6 A. This bullet represents -- every year, just like I said, you
7 get over a three year period, you get allotment of money. The
8 first year was 800,00, second year 600,000, third year 600,000.
9 So this is, this is a commercial -- this is a grant. We expect
10 to make changes. So before you allocated your next period of
11 funding, we actually look at your budget see if there's going
12 to be any changes. And if you need changes, you have to
13 request approval of a revised budget. Other than that, the
14 budget that was approved is the budget that you have to abide
15 by. But if you have changes, you can't request changes.

16 THE COURT: Budget for what period of time?

17 THE WITNESS: Whenever your grant is instated. Like
18 this grant was like October 1st, 2001 until September, so it's
19 a year. It's one year. But within, within that year you could
20 look at it and say that I see that I want to make changes or I
21 need to reallocate money, and you're allowed to request a
22 change but you have to get approval and it has to be written
23 and has to be signed off by my grants officer, my supervisor.

24 THE COURT: But you talked about making -- you told us
25 their were three.

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1 THE WITNESS: Yeah, three budgets period.

2 THE COURT: 800, 600 and 600. How does that relate to
3 what's up on the board?

4 THE WITNESS: Well, your first year is going to --

5 THE COURT: How does that relate to what you told
6 people about the three year period?

7 THE WITNESS: This is at the end of the year. So,
8 basically, the end of the year would be September 30th. So,
9 therefore, you should review your budget for the following year
10 and see if you need to make changes so you can request an
11 approval. And your next year starts October 1. That's when
12 you're going get your allocation of your new funds.

13 Q. So just to be clear, Ms. Snowden, you're referring to the
14 next year's budgets allocation?

15 A. Yes.

16 Q. -- in this bullet, is that right?

17 A. Yes.

18 Q. Now, if you're going to make prior changes to the existing
19 year's budget that you're operating in, how are those approvals
20 going to come, if at all?

21 A. It would come still -- you have to request it and it's
22 going to come in a written form. My supervisor has to sign off
23 on it. You're going to get an amendment that says that we
24 approve your revised budget dated October 1st, 2004 and we'll
25 send you a signed document, with my supervisor's signature on

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1 it.

2 Q. Okay. Now I'd like you to look at page seven of the same
3 exhibit, which I believe is in the binders for the jury. Pull
4 that up. See page seven? You see page seven, Ms. Snowden?

5 A. Yes.

6 Q. All right. And you see the bullet that says, budget line
7 item changes greater than 10 percent of total number approved
8 budget for each recipient for each project year?

9 A. Yes.

10 Q. Did you discuss that item with people present?

11 A. Yes, I did.

12 Q. And what did you discuss with them about that?

13 A. That this bullet means that any line item that is
14 10 percent or more, you have to get prior approval and that
15 approval will come in a written document signed by the grants
16 officer.

17 Q. And is that in the existing year's budget that you're
18 operating under, you want to make changes to that budget?

19 A. Yes.

20 Q. All right. I'd like you to turn to page 17 of that exhibit
21 as well. See that slide?

22 A. Yes.

23 Q. Is that part of your presentation as well?

24 A. Yes, it is.

25 Q. And you see the title relationship between cost share and

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1 ATP funds?

2 A. Yes.

3 Q. Did you discuss this issue of cost share with the people
4 from CASI?

5 A. Yes.

6 Q. What did you tell them about cost sharing?

7 A. When we explain this slide, it's explained to the extent
8 ATP funds are the federal funds. Those are the funds that the
9 federal government incorporates into the project.

10 Cost share is the funds that the recipient that he
11 incorporates into the, to the project. The ATP and the --
12 which is the federal funds and the non-federal funds from the
13 company, together they totaled the ATP project budget. So base
14 them together, that's the full budgets.

15 Q. And did CASI have a cost share in their grant?

16 A. Yes, they did.

17 Q. Do you know if, with respect to cost share, are in kind
18 contributions allowed in order to cover the cost share
19 requirement?

20 A. In kind is allowable if it was incorporated into the
21 original proposal and approved in the beginning of the project.

22 Q. And do you know what the limit is on whether in kind
23 contribution can apply, if they're going to apply?

24 A. 30 percent.

25 Q. And how do you know that?

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1 A. They're part of -- they're part of, they're part of the
2 regulations under the general terms and conditions of this
3 award -- of grant of ATP awards across the board.

4 Q. So only 30 percent in kind?

5 A. That's it.

6 Q. Contribution?

7 A. Yes.

8 Q. All right. Ms. Snowden, approximately, how many prior
9 times before the CASI kickoff meeting did you give this slide
10 presentation?

11 A. Before CASI, I had probably given this presentation
12 probably about six or seven times before CASI.

13 Q. Did you do anything differently for the CASI group when you
14 gave this presentation?

15 A. No, not at all.

16 MR. EVERDELL: Your Honor, I notice it's almost four.
17 This is probably a good breaking point if you want to break
18 here or I can continue if you like?

19 THE COURT: Well, let's go a little while. I do have
20 a conference that's important, but let's go for a little while
21 if you can. We don't -- all the people don't seem to be here
22 for that conference.

23 MR. EVERDELL: Okay, your Honor. I happen to know I'm
24 one of them, so.

25 Q. All right.

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1 THE COURT: Oh, you're one of them?

2 MR. EVERDELL: I'm one of them.

3 THE COURT: All right. I forgot that.

4 Q. All right. Ms. Snowden, I want to talk to you a little bit
5 more about the rules of the ATP grant. Let's talk first about
6 the rules concerning fringe benefits, all right. Are you
7 familiar with the rules concerning fringe benefits for the ATP
8 fund?

9 A. Yes.

10 Q. All right. I'd like to show you what's already in
11 evidence -- oh, and what are fringe benefits?

12 A. Fringe benefits are indirect costs.

13 MR. RUBINSTEIN: Objection, your Honor.

14 THE COURT: What?

15 MR. RUBINSTEIN: I object to the witness testifying as
16 to what fringe benefits are.

17 THE COURT: Well, did you, in your discussion with the
18 parties, do you explain what you mean by fringe benefits?

19 THE WITNESS: They're detailed in ATP kit that the
20 company received, they have an itemized list of what we would
21 consider fringe benefits.

22 THE COURT: I see. Whereabouts is that?

23 THE WITNESS: It's in the prep kit under the budget
24 narrative and fringe benefits in the ATP kit. 35 percent or
25 more, they have to itemize them and under that they don't, so

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1 it was like -- sorry.

2 MR. EVERDELL: Your Honor, I'm going to direct the
3 witness' attention to the documents. I'm specifically asking
4 her to testify about what's in the documents in the regs now.
5 I'm not talking about the kickoff meeting.

6 THE COURT: All right.

7 MR. EVERDELL: Okay.

8 THE COURT: Go ahead.

9 Q. All right, Ms. Snowden, you said you're familiar with the
10 rules concerning fringe benefits, right?

11 A. Yes.

12 Q. All right. If you could look, please, at Government's
13 Exhibit 2, if we could have that up, and page two of that
14 exhibit.

15 This is the general terms and conditions Advanced
16 Technology Aspects Programs, and if we could highlight on the
17 left-hand side C(1). You see that line their, that paragraph
18 excuse me, C(1)?

19 A. Yes.

20 Q. All right. And you see where it says, by signing this
21 award, the recipient agrees to ensure that only actual costs
22 incurred will be charged to the award and that all costs will
23 be reasonable, allocable and allowable in accordance with the
24 federal cost principles; is that right?

25 A. Yes.

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1 Q. And then below the next line says, recipients shall also
2 ensure that all salary wages, et cetera, fringe benefits,
3 travel, et cetera, et cetera, the rest of that I won't read it
4 all, but do you see that whole paragraph?

5 A. Yes.

6 Q. What does that whole paragraph mean?

7 MR. RUBINSTEIN: Objection, your Honor.

8 THE COURT: What do you tell -- do you discuss this
9 paragraph with the -- at the kickoff meeting?

10 THE WITNESS: No, we don't -- not in-depth. This is
11 this is part of their regulations that they follow, this is
12 this is --

13 THE COURT: Is this distributed to them?

14 THE WITNESS: Yes, it is.

15 THE COURT: To the --

16 THE WITNESS: Yes.

17 THE COURT: And if there are questions about, is it
18 appropriate, you ask them if they have any questions about the
19 materials?

20 THE WITNESS: Exactly. They can ask all the
21 questions, yes.

22 MR. EVERDELL: Your Honor, this is the person who is
23 the rules person so her interpretation of the rules is relevant
24 about what it means.

25 MR. RUBINSTEIN: I move to strike that, your Honor,

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1 the comment.

2 THE COURT: Let's not have argument.

3 MR. EVERDELL: I apologize, your Honor.

4 Q. All right. Ms. Snowden, I'll ask the question again this
5 paragraph which mentions reasonable, allocable and allowable
6 costs, as well as fringe benefits, what does that mean, that
7 term?

8 MR. RUBINSTEIN: Objection, your Honor. She's already
9 testified that she didn't discuss this with Dr. Karron.

10 THE COURT: Is there a provision in the materials that
11 are distributed to the recipients that explains what that
12 means?

13 THE WITNESS: Well, just like the rest of the
14 regulations, we give them a copy of it. If they don't
15 understand it, they're to call and ask.

16 THE COURT: Where do they -- where are the, where is
17 it explained?

18 THE WITNESS: Well, it's not detailed. It's not, it's
19 not explained in detail.

20 THE COURT: Not?

21 THE WITNESS: You're -- they're just given a
22 distribution and copy of the terms and conditions. And at the
23 kickoff I just explain, these are the regulations that govern
24 the award. If you don't understand them and need them to be
25 explained, call me.

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1 So this was part of the handout that was given to the
2 recipient. So if he didn't understand, or she or whoever
3 didn't understand what this meant, it was up to them to give me
4 a call and ask me to explain it further.

5 MR. EVERDELL: Your Honor, if I could have a moment,
6 please?

7 THE COURT: Yes, sir. I see the other --

8 BY MR. EVERDELL:

9 Q. All right. Ms. Snowden, if I could for a moment, if we
10 could take down that and put up Government's exhibit 10B, which
11 is already in evidence if you want to refer to that, and I
12 believe this is the last page of that document?

13 THE COURT: What is exhibit 10B?

14 BY MR. EVERDELL:

15 Q. Ms. Snowden, do you see 10B?

16 A. Yes, I have 10B. It's your budget letter, looks like this.

17 THE COURT: Is that distributed to the recipients?

18 THE WITNESS: Yes.

19 THE COURT: What time?

20 THE WITNESS: They get a copy of this. This is filled
21 out by them, the recipient fills this portion out. This is how
22 they outline how -- this corresponds with the budget that they
23 give us. So line by line, all this these line items
24 ultimately, the total corresponds with the budget they give us
25 for personnell, travel so on and so forth.

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1 THE COURT: With their application for the grants.

2 THE WITNESS: Yes, they give this to us. And then
3 when we send them the documents to sign, this is attached. So
4 they sign the document, and this is attached and they're saying
5 everything is correct.

6 Q. So just to be clear, this is a document that was prepared
7 by the people at CASI and submitted to NIST to you?

8 A. Yes.

9 Q. All right. Seeing the same page now that I believe is the
10 last page of that exhibit, you see the top portion there?

11 A. Yes.

12 Q. Fringe benefits, it says?

13 A. Yes.

14 Q. And it says makes up the --

15 THE COURT: She's just, she's just made it so you
16 can't read it.

17 MR. EVERDELL: If we could zoom just a touch more?

18 THE COURT: Just the top section.

19 MR. EVERDELL: All right, I think that's probably --

20 THE COURT: I guess you can read it. Can everyone
21 read it? All right.

22 Q. Ms. Snowden, would you just read that after fringe
23 benefits?

24 A. Identify percentage rate. If greater than 35 percent,
25 provide a breakdown of what makes up the fringe benefits, i.e.,

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1 vacation, sick, military leave, health and life insurance,
2 retirement, Social Security, et cetera. If fringe benefits are
3 normally included in your organization's indirect cost rate,
4 they should be budgeted as such and check the appropriate line
5 below.

6 Q. And is this part of the budget that was submitted by CASI?

7 A. Yes.

8 Q. And this is their allocation of fringe benefit rates?

9 A. Yes.

10 Q. All right. So does this document explain what fringe
11 benefits are for the ATP grants?

12 MR. RUBINSTEIN: Objection, your Honor.

13 THE COURT: What they may include.

14 MR. EVERDELL: Excuse me, your Honor.

15 Q. Ms. Snowden, does this document explain what fringe
16 benefits may include in a budget proposal --

17 A. Yes.

18 Q. -- submitted by a company who receives an ATP grant?

19 A. Yes, it does.

20 Q. And do those fringe benefits include health insurance,
21 according to this list?

22 THE COURT: I think that they've been read to the jury
23 and I think the jury knows whether that's included or not.

24 MR. EVERDELL: All right. Thank you, your Honor.

25 Q. Can you explain what the last sentence means, if fringe

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1 benefits are normally included in your organization's indirect
2 cost rate, they should be budgeted as such and check the
3 appropriate line below?

4 A. Right. Usually fringe benefits are indirect costs. That's
5 the cost of doing business. If they're normally put in your
6 indirect costs, just because you receive a federal grant
7 doesn't mean all of a sudden they're going to be a part of your
8 direct costs, and the government is going to pay for it. If
9 you, in your normal, in your normal business day, your
10 procedures that you use it, that you charge these as an
11 indirect cost to your company, you still must follow the same
12 accounting principles when you receive the grants, or the
13 federal funds. That's what that means.

14 Q. All right. Now, is there anything that ATP requires of a
15 company that receives an ATP grant if they're going to spend
16 ATP funds on fringe benefits?

17 A. The requirement is if it's over 35 percent, you have to
18 itemize. Under, you don't have to give us detail.

19 Q. Is there any other requirement as to procedures that the
20 ATP requires of a recipient?

21 A. You must have written, written procedures. So under, under
22 regulations, you must have management, and you must have
23 written, written procedures that govern.

24 THE COURT: You say written procedures, you mean
25 written standards?

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1 THE WITNESS: Written standards, procedures for your
2 company, that will outline.

3 THE COURT: As to what constitutes.

4 THE WITNESS: Yeah, what constitutes your course of
5 business, yes.

6 THE COURT: All right. Is this a good place to break?

7 MR. EVERDELL: There is a good place, your Honor.

8 THE COURT: All right, let's take a break and please
9 come back at 9:30. And I have a note from one of the jurors,
10 but I can't take it up until I've had a chance to discuss it
11 with counsel, all right. I'll do it first thing in the
12 morning, though I'll try and do it 9:15.

13 (Jury exits the courtroom)

14 (Continued on next page)

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1 (In open court; jury not present)

2 THE COURT: All right, is there anything to take up?

3 MR. RUBINSTEIN: No, your Honor.

4 THE COURT: All right, see you at 9:15 in the morning.

5 MR. RUBINSTEIN: Yes, your Honor.

6 MR. KWOK: Your Honor, I do have two issues. I don't
7 know whether this is a good time or whether it's better to
8 raise it tomorrow morning. Essentially, I just --

9 THE COURT: Maybe it would be good to give Mr.
10 Rubinstein and myself a head's up about what the two issues are
11 and maybe we'd be able to take less time tomorrow morning on
12 them.

13 MR. KWOK: The first one is just expert witnesses. We
14 want to once again advice the Court and defense counsel we may
15 soon be calling the first of our two expert witnesses on
16 accounting, and I just want to know whether there are going to
17 be any objections so we don't have an argument in front of
18 jury.

19 The second is I prepared some exhibits that will be
20 discussed by that witness and I also want to know whether those
21 are acceptable to the Court and defense counsel.

22 THE COURT: Well, I haven't had either. I have no
23 knowledge about either application. I don't even know the
24 names of the expert witnesses.

25 MR. KWOK: The first, the witness expert I'm referring

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863ZKAR6 Snowden - direct

1 to is Belinda Riley and I can show the Court and defense
2 counsel the blowups if --

3 THE COURT: Who are the two people?

4 MR. KWOK: The two expert witnesses are Belinda Riley
5 and Joan Hayes. The first one up would be Belinda Riley.

6 THE COURT: Any objection, Mr. Rubinstein?

7 MR. RUBINSTEIN: None your Honor.

8 THE COURT: None, okay.

9 MR. KWOK: Thank you, your Honor.

10 THE COURT: Next.

11 MR. KWOK: And the charts I have previously provided
12 them to defense counsel, but these are the blowups. I don't
13 know whether there are any objections to explaining these to
14 the jury.

15 THE COURT: Show them to Mr. Rubinstein.

16 MR. RUBINSTEIN: Actually he showed them to me before
17 and I told him aside from the color, I had no problem. Now
18 that I have a night to prepare for that color, I'll have no
19 problem with it tomorrow.

20 MR. KWOK: Thank you, your Honor. That's all.

21 MR. EVERDELL: Is the witness excused, your Honor?

22 THE COURT: Yes.

23 THE WITNESS: Thank you.

24 THE COURT: I'm sorry.

25 (Adjourned to June 4, 2008, at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT

1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

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3 UNITED STATES OF AMERICA, New York, N.Y.

3

4 v. S2 07 CR 541 (RPP)

4

5 DANIEL B. KARRON,

5

6 Defendant.

6

7 -----x

7

8

8 June 4, 2008

9 9:20 a.m.

9

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10 Before:

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11 HON. ROBERT P. PATTERSON, JR.,

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12 District Judge

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14 APPEARANCES

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MICHAEL J. GARCIA

United States Attorney for the
Southern District of New York

BY: STEVEN KWOK

CHRISTIAN EVERDELL
Assistant United States Attorneys

RUBINSTEIN & COROZZO, LLP

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BY: RONALD RUBINSTEIN

Also Present: Rachel Ondrik, U.S. Dept. of Commerce
Kirk Yamatani, U.S. Dept. of Commerce

8647KAR1

1 (Trial resumed; jury not present)

2 THE COURT: Good morning. We have this letter from
3 Ms. McCafferty, and the e-mail to her only says how important
4 it is that you try to get off the panel you're on, we need you
5 in the office this week. Of course then she says she received
6 ten calls, etc. What do the attorneys advise me would be a
7 wise way to handle this?

8 MR. KWOK: Your Honor, I spoke with Mr. Rubinstein
9 earlier this morning briefly. I think the parties agree we
10 should inquire briefly of the juror to see whether she can
11 remain fair and impartial in light of the work pressure. The
12 only concern the government has is it's just the third day of
13 trial, and we would be reluctant.

14 THE COURT: Well, isn't this conduct in violation of
15 law, trying to put pressure on a juror to get off the panel
16 that she is already on?

17 MR. EVERDELL: I looked briefly into that. I can't
18 say I did an exhaustive search, but I did see there is a civil
19 remedy if an employer discharges, threatens to discharge,
20 intimidates or coerces any permanent employee by reason of such
21 employee's jury service. Usually that's threatening to fire or
22 threatening some sort of immediate employment action.

23 THE COURT: Well, there is an implicit threat to fire
24 and then they're calling her. They shouldn't be interfering
25 with her service in this way.

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1 MR. EVERDELL: It's certainly true that they shouldn't
2 be interfering with her service. Whether or not it rises to
3 the level of an illegal act that would cause civil penalties,
4 that I can't say. But obviously there is a civil provision in
5 the U.S. Code if it rises to the level of threatening. It's 28
6 U.S.C. 1875.

7 THE COURT: What does it say?

8 MR. EVERDELL: It says no employer shall discharge,
9 threaten to discharge, intimidate or coerce any permanent
10 employee by reason of such employee's jury service in any court
11 of the United States.

12 THE COURT: Coerce.

13 MR. EVERDELL: I suppose. I don't want to make an
14 argument one way or the other what the employer's actions are
15 like, but obviously there is reason to believe that he
16 shouldn't be doing this. Whether or not it ultimately rises to
17 the level of a violation is another matter.

18 THE COURT: Well, let's call the juror in,
19 Ms. McCafferty.

20 Good morning, Ms. McCafferty.

21 Well, I got your note yesterday and I read it, but
22 employers are not supposed to put employees such as yourself
23 under pressure. There is a provision in the Code of Civil
24 Procedure that states that they're not supposed to do this.
25 And I don't know how best to aprise them of this, but they

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1 shouldn't be calling you and telling you about all of their
2 problems and what have you. If the bosses chose to go off on
3 trips and what have you, some of them can come back. It
4 shouldn't be interfering with your service.

5 What I'm concerned about is how to best tell your
6 employer in some way so that they don't put you under this
7 pressure anymore. They shouldn't put you under this pressure.
8 I don't know how to best tell them.

9 JUROR: I'm the only one that does my job and has been
10 for the last ten years.

11 THE COURT: I know, but other people.

12 JUROR: I understand what you're saying. It's just
13 like I worked until 1:30 this morning, and can I see this case
14 is going to take --

15 THE COURT: I know. I got this letter.

16 JUROR: That's fine.

17 THE COURT: What is the employer's name? I'm sorry.
18 I better write it down here.

19 JUROR: The name of the company? Savanna Real Estate
20 Fund. Savanna without an H on the end. S-A-V-A-N-N-A.

21 THE COURT: Savannah?

22 JUROR: Yes.

23 THE COURT: Like Savannah, Georgia?

24 JUROR: Like Savannah, Georgia without the H on the
25 end.

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1 THE COURT: And what's the rest of the name?

2 JUROR: Real Estate Fund.

3 THE COURT: And the address?

4 JUROR: 10 East 53rd Street, and the zip code is
5 10022.

6 THE COURT: Fax number?

7 JUROR: (212) 229-1113.

8 THE COURT: All right. Well, I'm going to fax them a
9 letter this morning and tell them to stop.

10 JUROR: They're not harassing me. I don't want you to
11 take it like that.

12 THE COURT: It's just that -- I guess you can go back.
13 I will try to write something that doesn't say harass or
14 anything of that sort.

15 JUROR: OK, thank you.

16 THE COURT: I don't want to give you the impression --
17 I don't want to give them the impression that you've complained
18 that they're harassing you.

19 JUROR: No, that's not the case. I just feel very
20 pressured, that's all.

21 THE COURT: Of course.

22 JUROR: You know, I'm working at night now, and it's
23 just that's all.

24 THE COURT: Thank you very much.

25 JUROR: Thank you.

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1 (Juror not present)

2 This is what I drafted, so you might be able to
3 improve it.

4 "Kim McCafferty is a member of the jury panel in a
5 criminal case which will last two weeks. She has attempted to
6 be excused from the panel as you requested in your e-mail of
7 June 3. I have denied that request. The case is somewhat
8 complex, and it is important that it be completed without a
9 mistrial based on too few jurors. It is important that she not
10 feel pressured either by telephone calls during the day or
11 onerous duties at night."

12 MR. KWOK: I think that's perfect.

13 THE COURT: Sound all right?

14 MR. RUBINSTEIN: No problem at all, Judge.

15 THE COURT: All right.

16 DEPUTY COURT CLERK: We're still short one juror. A
17 couple of the jurors have asked about taking notes.

18 THE COURT: Anything else to take up?

19 MR. KWOK: Yes, your Honor. Just two quick things.
20 The first is before we broke yesterday your Honor asked how
21 we're doing on time, and I replied that I think we're running a
22 little behind.

23 THE COURT: What's that mean?

24 MR. KWOK: I don't know what that means, but here is
25 the punch line. We went back last night to look at where we

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1 are, and we may be able to trim our witness list up to and
2 including cutting out one of the CPAs who might be testifying.
3 We're not committed to taking that course yet, but I wanted to
4 advise the court and defense counsel that's what we are
5 seriously considering so we can all plan accordingly.

6 The second issue is after Ms. Snowden's testimony this
7 morning or maybe this afternoon the next witness up is Belinda
8 Riley. I would request a slight break, because there is going
9 to be some setting up to do for this witness, so I would just
10 put that request to the court now.

11 THE COURT: OK.

12 MR. KWOK: Thank you.

13 MR. RUBINSTEIN: Excuse me, your Honor, we have a
14 slight problem.

15 THE COURT: Where is your client?

16 MR. RUBINSTEIN: He is not here yet.

17 THE COURT: You should have told me earlier this
18 morning.

19 MR. RUBINSTEIN: I was hoping he would get here by
20 9:30. Yesterday I picked him up myself. And I spoke to him
21 this morning at 7:30 when I was leaving my house, and he said
22 that he would come himself. If I could use the court phone, I
23 will call his cell phone.

24 THE COURT: Call his cell phone.

25 MR. RUBINSTEIN: Thank you. I know that he sent an

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1 e-mail 3:41 this morning, so ...

2 Your Honor, I just spoke to my client who informs me
3 he has a cab waiting downstairs. He is in the process of
4 leaving his home on East 33rd and Second Avenue.

5 THE COURT: At quarter of ten?

6 MR. RUBINSTEIN: At quarter of ten, yes.

7 THE COURT: He is supposed to be here at quarter after
8 nine?

9 MR. RUBINSTEIN: Judge, I will pick him up for the
10 rest of the trial.

11 THE COURT: Well, since it's voluntary, I suppose we
12 can go ahead. You better call your office, Mr. Kwok and Mr.
13 Everdell. That's what I propose to do.

14 MR. EVERDELL: If we could have a moment to call just
15 to make sure that that's acceptable.

16 THE COURT: Sure.

17 MR. RUBINSTEIN: Can I use the courtroom phone to call
18 my office to see if they have some guidance?

19 THE COURT: OK. You can use our phone.

20 MR. RUBINSTEIN: Thank you very much, your Honor.

21 (Recess)

22 THE COURT: That's how I intend to proceed.

23 MR. KWOK: I just conferred with our chief of appeals.
24 Based on just the quick conversations, she is inclined to wait
25 because --

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1 THE COURT: Oh, come on. Get an answer from him. Of
2 course he would. Get an answer from him one way or the other
3 on the law. We can't have this go on.

4 MR. KWOK: I guess the only thing I would ask, if
5 defense counsel would tell us is --

6 THE COURT: No, there is no excuse.

7 MR. RUBINSTEIN: I know that, Judge, but --

8 THE COURT: He has no excuse. It isn't that he has
9 been in the hospital or anything else. He has no excuse.

10 MR. RUBINSTEIN: I understand that, your Honor, but
11 unfortunately it would send I think a terrible message --

12 THE COURT: That's his choice.

13 MR. RUBINSTEIN: -- to the jury, and he couldn't get a
14 fair trial.

15 THE COURT: Oh, come on, that's his choice. That was
16 his choice when he was lazy about getting up or whatever he was
17 doing.

18 MR. RUBINSTEIN: Judge, he was up at 3:41 in the
19 morning because he sent me an e-mail.

20 THE COURT: He didn't have to. He could have gone to
21 bed at a decent hour like everyone else.

22 MR. RUBINSTEIN: I would ask your Honor -- as we know
23 from my conversation with him, he should be here.

24 THE COURT: You can't tell with traffic and possible
25 rain and what have you.

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1 MR. RUBINSTEIN: That is accurate, your Honor, but I
2 would ask if your Honor --

3 THE COURT: I mean it, let's get an answer on the law
4 from the assistant, whoever you are checking with, the
5 appellate group.

6 MR. EVERDELL: We will do that. May we be excused?

7 THE COURT: There is no excuse whatsoever for this.
8 Good morning, Ms. Koeleveld.

9 MS. KOELEVELD: As you can see, there was a consult.

10 THE COURT: I can remember Judge McMann putting the
11 jurors in the jury box and waiting for the defendant to come.

12 MS. KOELEVELD: I don't see a problem with that.

13 MR. RUBINSTEIN: Judge Nickerson in the Eastern
14 District used to do that, and if the lawyer wasn't there, they
15 would start.

16 THE COURT: Do it with the lawyer too. Of course the
17 marshals would bring the defendant in those cases.

18 MR. KWOK: Your Honor, I think the relevant rule that
19 governs this situation is Rule 43 of the criminal procedure,
20 subsection (c)(1)(A), which reads, "The defendant who was
21 initially present at trial or who had pleaded guilty or nolo
22 contendere waives the right to be present under the following
23 circumstances: A, when the defendant is voluntary absent after
24 the trial has begun, regardless of whether the court informed
25 the defendant of an obligation to remain during trial."

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1 From what we have just heard so far, I think the only
2 excuse is perhaps the defendant overslept. And I think as long
3 as your Honor makes a finding on the record that the defendant
4 voluntarily absented himself and there is no legitimate excuse
5 for an absence, I think we are fine going forward.

6 THE COURT: All right, let's call in the jury.

7 MR. RUBINSTEIN: I would have to, with all due
8 respect, ask for a mistrial.

9 THE COURT: Your application is denied.

10 MR. RUBINSTEIN: I would ask for a limiting
11 instruction that the defendant is absent and they shouldn't
12 speculate as to the reason that he is not present.

13 THE COURT: All right. Please call in the jury.

14 (Continued on next page)

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8647KAR1

1 (Jury present)

2 THE COURT: Please be seated. Ladies and gentlemen,
3 you will note that the defendant is not here. You are not to
4 speculate as to why he is not here or not present at this time.
5 He is expected at some point.

6 I want to thank you for being on time, but obviously
7 we got delayed a little bit.

8 Some of you have asked about taking notes. I allow
9 taking notes, but I do want to give you a warning. The
10 difficulty that notetaking presents sometimes is that people
11 who take the notes become wedded to the notes and think that
12 they have taken verbatim notes, and when you get into jury
13 deliberations sometimes that hardens the juror's position, and
14 people who watched and listened feel that their recollection is
15 correct, and the person who takes the notes says I've got it
16 down here in black and white that's what he said.

17 Well, the answer is you can call for a transcript, and
18 the transcript will tell you exactly what the witness said,
19 because the court reporter has the benefit of long expertise in
20 taking notes and mechanical assistance so that he or she can
21 get every word that is said.

22 So, I allow taking notes, but I want to warn you that
23 it does sometimes cause difficulty in the jury room because of
24 the people taking notes having a conflict with the people who
25 didn't take notes. There is a resolution to it. If I explain

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1 the resolution in advance, that sometimes prevents disputes in
2 the jury room.

3 So, I think I've answered the only questions I have
4 outstanding. We will go ahead with the witness Ms. Snowden.

5 HOPE SNOWDEN, resumed.

6 THE COURT: Ms. Snowden, you are reminded you are
7 still under oath. The jury is reminded that that is an
8 obligation of the court to give her such an instruction when
9 the witness takes the stand on a subsequent day.

10 DIRECT EXAMINATION (Continued)

11 BY MR. EVERDELL:

12 Q. Good morning, Ms. Snowden.

13 A. Good morning.

14 Q. Before we start, if I could ask Ms. Moussa to put up
15 Government Exhibit 4, which is already in evidence, page 7.

16 THE COURT: This is what?

17 MR. EVERDELL: Government Exhibit 4, page 7.

18 Actually, if I have a moment, I need to reposition the
19 exhibits back on the witness stand.

20 Q. Ms. Snowden, if you can refer to the screen or the exhibit
21 in front of you, Government Exhibit 4.

22 A. I will look at the exhibits. They are not in order, so...

23 Q. You recall when we broke yesterday we had some discussion
24 about that second bullet point there, the budget line item
25 changes there.

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8647KAR1 Snowden - direct

1 A. Yes.

2 Q. Greater than 10 percent. What was the first year of CASI's
3 budget under their ATP grant they received?

4 A. \$800,000.

5 Q. What year did that span?

6 A. October 1, 2001 until September 30, 2002.

7 Q. So the initial budget that was approved, what year did that
8 cover, that budget?

9 A. October 1, 2001 until September 30, 2002.

10 Q. So, would that budget cover costs that were incurred during
11 that year, during that October 1 to September --

12 A. That's the only time they were covered. It only covers
13 expenditures during that period of time only.

14 Q. Would it cover any expenditures that occurred before that
15 time?

16 A. No.

17 Q. We talked a bit also about the regulations governing the
18 ATP grants yesterday.

19 A. Yes.

20 Q. Just a few more questions about that. Are there
21 government-wide regulations that apply to the ATP grants that
22 are not ATP grant specific?

23 A. Yes.

24 Q. And do these regulations apply to more than one government
25 grant?

8647KAR1

Snowden - direct

1 A. Yes.

2 Q. Are there rules specific to the ATP grant that just cover
3 the ATP grant?

4 A. Yes, there is.

5 Q. And which rules control if there is an ATP-specific rule
6 versus a government-wide rule?

7 A. Your ATP special work conditions and your general terms and
8 conditions, they are specified within the award, so ...

9 Q. So, if there is an ATP rule that applies to the ATP grant
10 and a government-wide rule --

11 A. Your ATP rules supersede all other rules, because they're
12 program-specific rules, so you have your ATP rules and then
13 other rules, but ATP supersedes everything.

14 Q. OK. Ms. Snowden, while the grant was in effect for CASI,
15 do you know who had the authority to sign checks for CASI or
16 make other financial commitments on behalf of the company?

17 A. Yes.

18 Q. And who had the signatory authority for CASI?

19 A. Dr. Karron.

20 Q. And how do you know that?

21 A. Because I received -- I received the e-mail. I actually
22 received a letter from him stating that no other person was
23 authorized to certify anything under the company besides
24 himself.

25 Q. I would like you to look if it's in your stack there

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8647KAR1

Snowden - direct

1 Government Exhibit 21 already in evidence, and if we can
2 display that on the screen.

3 Do you have that in front of you, Ms. Snowden?

4 A. Yes, I do.

5 Q. Do you recognize that document?

6 A. Yes.

7 Q. What is that?

8 A. This is an amendment to the original proposal.

9 Q. And which numbered amendment is that?

10 A. Number 1, the first one.

11 Q. Would you please flip to the third page of that exhibit.
12 If we could zoom in on the final paragraph or the final -- the
13 letter substance is fine. Right there.

14 All right. Ms. Snowden, what is this letter?
15 Actually if you could just read from the two paragraphs there.

16 A. "This letter authorizes Mr. Lee Gurfein as administrative
17 contact on cooperative agreement number 70NANB1H3050 with
18 Computer Aided Surgery, Inc.

19 "This authorization is valid for the period of one
20 year from the start of the agreement on October 1, 2001 through
21 September 30. This authorization can be revoked in writing to
22 you and him by myself at any time this authorization is in
23 effect. Until specifically authorized to do so, Mr. Gurfein is
24 not an officer of the corporation and is not authorized to sign
25 for the corporation. The authorization for Mr. Gurfein to

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Snowden - direct

1 commit the corporation will be made by separate letter
2 authorization if the need arises."

3 Q. Let's just take that one bit at a time. That first
4 paragraph there, it says it authorizes Mr. Gurfein as an
5 administrative contact. What is that again?

6 A. The person who calls me and asks questions. It could be
7 about what's allowed in this grant.

8 Q. OK. Now this last sentence here, "until specifically
9 authorized to do so, Mr. Gurfein is not an officer of the
10 corporation and is not authorized to sign for the corporation,"
11 what does that mean?

12 A. That means he can't sign official documents. So, he can
13 contact me and talk to me verbally, but when it comes to
14 official documents and signing to commit the company, he is not
15 authorized to do so.

16 Q. Who did have that authorization?

17 A. Dr. Karron.

18 Q. And then it says at the end, "The authorization for
19 Mr. Gurfein to commit the corporation will be made by separate
20 letter authorization if the need arises."

21 Do you see that?

22 A. Yes.

23 Q. Did NIST or ATP ever receive another letter giving Mr. Lee
24 Gurfein authorization to commit the company in any way?

25 A. No.

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8647KAR1

Snowden - direct

1 Q. If we can zoom out to the full letter on page 3. When is
2 that letter dated?

3 A. October 11, 2001.

4 Q. And about how long after the grant was awarded did that
5 letter come in?

6 A. Within two weeks.

7 Q. All right. Ms. Snowden, did you hear from Dr. Karron again
8 after the kick-off meeting that we discussed yesterday?

9 A. Yes, I did.

10 Q. And how did you hear from him?

11 A. He contacted me.

12 Q. In what ways did he contact you?

13 A. He called me on the phone. I mean during the course he
14 e-mailed me also.

15 Q. And about how often did he contact you in these ways?

16 A. Quite often, quite often.

17 Q. And do you know whether he contacted anyone else at NIST?

18 A. Yes.

19 Q. Who else did he contact?

20 A. B.J. Lide, Jayne Orthwein, and my former supervisor Marilyn
21 Goldstein.

22 Q. Did these people all have some responsibility with the ATP
23 grant?

24 A. We worked as a team on the ATP grant, and any issues and
25 problems, we discuss it; and anything that happens within my

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Snowden - direct

1 office, of course I have to discuss it with my supervisor

2 Marilyn Goldstein.

3 Q. What sorts of things did the defendant discuss with you in
4 these subsequent contacts?

5 A. Subsequent contacts were basically about could he use
6 federal funds to pay for rent and utilities.

7 Q. So, is this a similar topic as before?

8 A. Exact similar. It's the exact topic.

9 Q. And what was your response to him on those occasions that
10 he talked to you?

11 A. It was always no. No matter what he said, how he said it
12 to me, it's no, these are taxpayers money and we do not use
13 that to pay for rent and utilities.

14 Q. Did you hear from anybody else from CASI after the kick-off
15 meeting?

16 A. Yes.

17 Q. Who did you hear from?

18 A. Dr. Karron and Lee Gurfein.

19 Q. And how did Lee Gurfein contact you?

20 A. He called me.

21 (Defendant present)

22 Q. And what if anything did you discuss with Lee Gurfein?

23 A. The same thing, about calls, could he use the federal funds
24 to pay for rent and utilities.

25 Q. And what if anything was your response to Mr. Gurfein?

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8647KAR1

Snowden - direct

- 1 A. No. Again and again, absolutely not.
- 2 Q. All right, Ms. Snowden. Did there come a time when there
- 3 were amendments to this grant, the CASI ATP grant?
- 4 A. Yes.
- 5 Q. And if you can pull out in front of you the folders that
- 6 are in evidence, Government's Exhibits 22, 23, 24, 25 and 26.
- 7 A. OK.
- 8 Q. Have you had a chance to look at those documents?
- 9 A. Yes.
- 10 Q. Do you recognize those documents?
- 11 A. Yes.
- 12 Q. What are those documents?
- 13 A. These are amendments to the award.
- 14 Q. And over what course of time were these amendments
- 15 submitted and approved?
- 16 A. Including the original document that he signed to accept
- 17 the grant, October 2001 through June 2003.
- 18 Q. Were these amendments actually approved by NIST?
- 19 A. Yes, these are all approved amendments, yes.
- 20 Q. In general, what kinds of changes were made to the grant as
- 21 a result of these amendments?
- 22 A. Administrative changes and a budget change.
- 23 Q. Why don't you take a look at Government Exhibit 22. If you
- 24 can display that as well. Do you see that document,
- 25 Ms. Snowden?

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1 A. Yes, I do.

2 Q. Which amendment is that?

3 A. Amendment 2.

4 Q. And what kind of changes were made with amendment 2?

5 A. Administrative changes and a budget change, revised budget.

6 Q. There was a revised budget with this amendment?

7 A. Yes, it was approved, yes.

8 THE COURT: You say administrative changes. What are
9 you covering?

10 A. We revised the contact's name. When I originally got this,
11 I put the administrative contact as Lee Gurfein, and then Dr.
12 Karron sent me something saying that he wanted his whole name
13 put in, so that was incorporated into this, so that was an
14 administrative change.

15 THE COURT: Whose whole name?

16 THE WITNESS: Lee Gurfein's name, and it's Elisha
17 Gurfein. But in the original document it had Dr. Karron as a
18 technical and Lee Gurfein, not Elisha.

19 Q. If we could display page 3.

20 And, Ms. Snowden, if you could look at page 3.

21 Blow that up as much as possible. I believe these are
22 also in the jury binders if it's too small to read there.

23 Ms. Snowden, you mentioned a revised budget as part of
24 amendment 2. Is this the revised budget that's part of that
25 amendment?

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1 A. Yes.

2 Q. Now, if you could leave that on the screen and also take a
3 look at Government Exhibit 14 which is already in evidence.

4 THE COURT: Leave what on the screen?

5 MR. EVERDELL: Government Exhibit 22, page 3, which is
6 what Ms. Snowden was commenting on before, the budget
7 amendments, and comparing that to Government Exhibit 14, which
8 is already in evidence.

9 Q. Ms. Snowden, looking first at Government Exhibit 14, do you
10 know what that document is?

11 A. Yes.

12 Q. What is that document?

13 A. This is the original budget that was approved with the
14 original proposal.

15 Q. Was that the last approved budget before amendment 2?

16 A. Yes.

17 Q. All right. What shifts in budget if any are reflected
18 between Government Exhibit 14, the last approved budget, and
19 government's 22, the first amended budget?

20 A. The personnel, fringe benefits, travel, equipment.

21 Q. Can you just point us to an example on the screen between
22 the two of those categories you are talking about and the
23 numbers there.

24 A. The first one is dated.

25 THE COURT: Can the jury see this? Because my

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1 eyesight used to be excellent, but I can't read it now.

2 MR. EVERDELL: Well, I'm sorry.

3 THE COURT: Can the jury read it?

4 MR. EVERDELL: If the jury has the binders in front of
5 them, they can look at the numbers.

6 THE COURT: You have the binders so you can follow it.

7 MR. EVERDELL: I will note with the pointer where
8 these are, so hopefully that will make it a little easier.

9 THE COURT: Let's make sure they have the right pages.

10 MR. EVERDELL: It's Government Exhibit's 14, which I
11 believe is one page, and then the third page of Government
12 Exhibit 22.

13 All right. Ms. Snowden, you mentioned a few
14 categories.

15 THE COURT: Just hold it a second until they have a
16 chance to get it together.

17 MR. EVERDELL: Yes, your Honor.

18 THE COURT: Because they will have to do a little
19 flipping back and forth.

20 MR. EVERDELL: Yes, your Honor.

21 THE COURT: What page of 22 is this?

22 MR. EVERDELL: It's 3.

23 THE COURT: Page 3.

24 DEPUTY COURT CLERK: 22, page 3.

25 THE COURT: All right.

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1 BY MR. EVERDELL:

2 Q. All right. Ms. Snowden, you mentioned a few categories
3 where there were some shifts. Do you want to just give an
4 example that we can highlight here?

5 A. On the first document dated 9/20/01.

6 Q. Government's 14?

7 A. Yes, personnel salaries was \$375,000.

8 Q. Is that this one right here?

9 A. Yes. On the revised budget it went to \$325,000.

10 Q. Right there? If you look at the screen. I just want to
11 make sure I'm marking the right thing.

12 A. Yes.

13 Q. OK. Hold on.

14 If you can just blow up the first four categories.

15 Q. So we did personnel salaries and wages. Can you give us
16 another example?

17 A. Travel originally was \$4,000.

18 Q. Right here?

19 A. Yes.

20 Q. OK.

21 A. Category C, on the original budget. And on the revised
22 budget it is now \$20,000 category C.

23 Q. Right there?

24 A. Yes.

25 Q. OK, that's fine. Now, as you compare these two budgets,

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1 the approved budget with the first amended budget --

2 THE COURT: Now just one second. Also you skipped
3 over fringe benefits. Was there a change in fringe benefits?

4 THE WITNESS: There's quite a few changes. I only
5 gave you guys a couple. There are a lot of changes. I didn't
6 think you wanted every last one of them.

7 Q. Would you mind doing fringe benefits?

8 A. Sure. Fringe benefits was originally \$127,500 on the
9 original approved budget. The revised approved budget it went
10 down to \$110,500.

11 Q. Now, looking at the revised budget amendment 2 compared to
12 the last approved budget, are any of the changes that were
13 affected by the amended budget -- did any of these changes
14 relate to an increase for air conditioning cost?

15 A. No.

16 Q. Do any of these relate to an increase for construction
17 costs or site improvement costs?

18 A. No, we don't pay for construction costs.

19 Q. And did any of these shifts -- sorry. Are any of these
20 shifts for site improvement costs?

21 A. No.

22 Q. Actually, if you could also look at the narrative which is
23 page 4 and 5 of Government Exhibit 22. Do you see that
24 document?

25 A. Yes.

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1 Q. And do you see -- if you want to highlight the bottom half
2 of that first page.

3 Do you see where it says reasons for requested
4 budgetary changes?

5 A. Yes.

6 Q. Do you see all those reasons listed there?

7 A. Yes.

8 Q. Do any of those reasons mention air conditioning?

9 A. No.

10 Q. Do any of those reasons mention construction costs?

11 A. No.

12 Q. Do any of those reasons mention site improvement costs?

13 A. No.

14 Q. Ms. Snowden, did NIST approve this amendment?

15 A. Yes, we did.

16 Q. Of the other amendments I showed you in that list, 21, 22,
17 23, 24, 25 and 26, are there any other changes to the budget
18 numbers in those amendments besides the ones we dealt with in
19 amendment 2?

20 A. No, this was the only approved budget.

21 Q. To your knowledge, were any other written amendments in the
22 CASI grant approved by NIST other than these documents I showed
23 you?

24 A. No, this is it.

25 Q. Did anyone from CASI make any oral request for amendments

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1 to the grant?

2 A. Yes.

3 Q. And who made those requests?

4 A. Dr. Karron.

5 Q. What did he want to modify with these requests?

6 A. He wanted to modify the equipment category.

7 Q. And how so?

8 A. He wanted to add money to the equipment category to buy a

9 piece of equipment.

10 Q. And did you have any conversations with the defendant about

11 this?

12 A. Yes.

13 Q. About what time was the first conversation you had with the

14 defendant about that?

15 A. November 2002.

16 THE COURT: November 2002.

17 THE WITNESS: Yes.

18 THE COURT: After the end of the first fiscal year?

19 THE WITNESS: The first fiscal year ended September

20 30, right. This should have been his site visit, yes.

21 Q. You referenced the site visit. Do you know about when the

22 site visit occurred?

23 A. It was November 2002.

24 Q. Were you personally at the site visit?

25 A. No, I wasn't here.

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1 Q. But it this around the time when you had these
2 conversations with the defendant about equipment?

3 A. Yes.

4 Q. On how many other occasions did this same topic of
5 equipment come up?

6 A. Quite a few times.

7 Q. What are the ATP rules about equipment after the grant is
8 done using the equipment?

9 A. The rules governing equipment is anything that's valued at
10 \$5,000 or more you have to do what's called a disposition form,
11 so that's all equipment that you own. You have to ask the
12 federal government can you either keep it and reuse it for
13 another federal grant or can you use it for commercialization.
14 And the federal government has a right to say yes or no. And
15 if they say no, you have to give us back our equipment.
16 Anything under \$5,000 that depreciates you can keep it, we
17 don't want it back.

18 THE COURT: You can keep it, you mean the grantee.

19 THE WITNESS: The grantee can keep it, and the federal
20 government, they don't want it back.

21 Q. All right. Now when the defendant talked to you about
22 buying more equipment, what if anything did you tell him?

23 A. After his site visit, since there was talk about this piece
24 of equipment, I told him that he had to do a revised budget
25 because he wanted to add additional money to the category, to

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1 the equipment category, so he needed to revise the budget, send
2 me a copy of the budget and a narrative that corresponds with
3 the budget.

4 Q. And did the defendant in fact submit a proposed revised
5 budget to you?

6 A. Yes, he did.

7 Q. I'm showing you, if you could take a look at Government's
8 Exhibits 31, 32, 33, 34, 35 and 36 already in evidence.

9 THE COURT: Sorry. Give me those numbers again.

10 MR. EVERDELL: Sure. 31, 32 --

11 THE COURT: 31 through 36?

12 MR. EVERDELL: Yes.

13 THE COURT: Go ahead.

14 Q. Ms. Snowden, if you would just take a minute to look
15 through those. Do you have those in front of you?

16 A. Yeah, I just want to look at two more. I have two more I
17 want to glance at really quickly. Thanks.

18 Q. All set with those?

19 A. Yes.

20 Q. Do you know what those documents are?

21 A. These are revised budgets.

22 Q. Are these revised budgets that were submitted by CASI?

23 A. Yes.

24 Q. And what if anything -- did you receive these budget
25 requests?

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1 A. Yes, I did.

2 Q. And did you review them when they came in?

3 A. Yes, I reviewed each and every one of them.

4 Q. And what if anything did you notice when you began

5 receiving these amendments?

6 A. I noticed that the numbers changed. Number one, the dates

7 were very, very close with the revisions, and on each revision

8 the monetary, the category, the numbers changed.

9 Q. Let's just be clear. Do you know the dates of these

10 revisions, these proposed revisions, I should say?

11 A. Yes, because I wrote the dates on them so that I could keep

12 up with the revisions and the day that they were dated, so I

13 wrote dates on all of these.

14 Q. And do you recall when those revisions were made or when

15 those proposed revisions were submitted?

16 A. One was August 1, 2002 and then --

17 Q. You're referring to which one?

18 A. Exhibit 31.

19 Q. OK.

20 A. And then October 20, 2002, Exhibit 32. December 2, 2002,

21 Exhibit 33. Got an e-mail for December 20, 2002, that's

22 Exhibit 34. Exhibit 35 came in four days later. Exhibit 35

23 was dated December 24, 2002. And February 25, 2003, that was

24 another revision.

25 (Continued on next page)

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1 BY MR. EVERDELL:

2 Q. And these are proposed revisions?

3 A. These are all proposed revisions. None of these were
4 approved.

5 Q. Why did they come in in quick succession like this?

6 MR. RUBINSTEIN: Objection, your Honor.

7 THE COURT: Objection sustained.

8 MR. EVERDELL: Your Honor, let me rephrase.

9 Q. What, if any, discussions did you have with the defendant
10 about these budget revisions coming in?

11 A. Um, policy -- what I do is I take, I will take this
12 revision and I will correspond it to the approved budget. So
13 then I have questions because there are other changes in the
14 categories beside the category that he wanted to change.

15 Q. Which category was that?

16 A. He wanted to change the equipment category. That's where
17 he was adding money.

18 Q. And what did you notice about these revised budgets, aside
19 from the equipment category?

20 A. That personnel changed, materials and supplies changed
21 across, across the board. They came in frequently, and all the
22 numbers were changing, and in each of the categories none of
23 them were consistent.

24 Q. And --

25 THE COURT: These relate to the first year?

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Snowden - direct

1 THE WITNESS: What happened was he asked for --

2 THE COURT: Which, do they relate to the first year or
3 not?

4 THE WITNESS: The first budget was within the first
5 year. That's -- so it was, it was in the period.

6 And then when I asked questions and he sent another
7 budget in, that came in October 20th, so it crossed -- so it
8 came within year two.

9 THE COURT: But all these changes relate to first year
10 expenses?

11 THE WITNESS: Let me look. No. He changed some of
12 the out years two too, so it wasn't just first year. He
13 changed -- if you look at even August 1st, exhibit 31, and you
14 can look at the second one, exhibit 32, look at year two, two
15 changed, and the change was only really supposed to be in year
16 one, but some of the numbers in year two also changed.

17 THE COURT: I see.

18 THE WITNESS: Okay.

19 Q. All right. So just so we can clarify that, Ms. Snowden,
20 that first requested amendment that came in, was that -- did
21 that -- was that submitted when the grant was still in your
22 year one or was in year two at that point?

23 A. This is year one.

24 Q. And in the subsequent request for amending the budget, what
25 year of the grant did those get submitted in?

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Snowden - direct

1 A. Year two, 'cause year two started October 1st, 2002.

2 Q. And what, if anything, did you notice about these budget,
3 requested budget amendments that came in while the grant was in
4 year two?

5 A. Not only were the numbers changing, but once you get in
6 year two, you should have actual costs for year one.

7 Q. Why should you have actual costs for year one?

8 A. Because year one is over and everything should be actual,
9 because you're going to be required to get an audit, and your
10 audited against actual numbers for that first year. So we're
11 well into year two, so year one and year two is changing,
12 frequently.

13 Q. All right. Well, let's -- let me ask you this before we
14 get to that. Did you approve any of these proposed budget
15 amendments?

16 A. No.

17 Q. If we could take a look at government exhibit 33, page one,
18 and Government's exhibit 34 page two, all right. So 33 is up
19 on the left-hand side of the screen, 34 is on the right-hand
20 side of the screen. You can use the ones in front of you.

21 Which -- the Government's 33 is, was submitted on what date?

22 A. 33, um, December 2nd, 2002.

23 Q. And is that in year one of the grant or year two of the
24 grant when that was submitted?

25 A. Year two.

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1 Q. And Government's exhibit 34 was submitted on what date?

2 A. December 20th, 2002.

3 Q. Is that year one of the grant or year two of the grant when
4 that was submitted?

5 A. Year two.

6 Q. Both in year two?

7 A. Yes.

8 Q. Okay. I want to look at the year one numbers here as a
9 example of what you were talking about before. You mentioned
10 before the year one actuals were changing, is that right?

11 A. Yes.

12 Q. Can you show us on this document an example of what you
13 mean by the year one numbers changing?

14 A. Let's see. You can go -- we can just go right onto -- we
15 go to fringe benefits. Fringe benefits on document one was
16 109,700. On exhibit number 34 it's 11 -- it's 112,565.

17 Q. So what's the difference their between the two?

18 A. That difference was like a little over \$3,000. It wasn't
19 very big. But keep on going.

20 Q. What other categories do you notice here?

21 A. You got travel changed, original travel. The travel that
22 was proposed in the first budget was 10,800, and then within a
23 couple weeks later the numbers changed to 19,920, with a
24 difference of, well, \$9,000.

25 Q. Okay. Material?

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Snowden - direct

1 A. Material and supply is another budget.

2 Q. Okay. What line is that?

3 A. Sorry about that. That's E.

4 Q. Okay.

5 A. It was \$35,000 in the first proposed revised budget.

6 Couple weeks later the number changed till 22,449.

7 Q. What's the difference their, roughly?

8 A. Probably about a little over \$10,000.

9 Q. And again are these year one numbers or year two numbers
10 that you're talking about there?

11 A. These are all year one numbers, and this is in December of
12 two -- December of the second year. So this, these should be
13 consistent. They should never change. You should have actual
14 numbers.

15 Q. And what, if anything, did these shifting numbers in the
16 year one numbers indicate to you?

17 A. That there is some problems, there was a red flag to me
18 there could be some issues of appropriations of these funds;
19 therefore, I talked to my team and my supervisor about these
20 issues.

21 Q. And what did you talk about?

22 MR. RUBINSTEIN: Objection, your Honor.

23 THE COURT: I'm sorry? We can't get into the, what
24 the supervisors told her.

25 Q. All right. Ms. Snowden, did you have a discussion with

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1 your supervisors?

2 THE COURT: For the truth of the statement, you can't
3 offer it for that.

4 MR. EVERDELL: Just simply to show the further actions
5 that happened later.

6 THE COURT: All right.

7 Q. Ms. Snowden, did you have conversations with your
8 supervisors about this?

9 A. Yes.

10 Q. And what, if any, action later did you take as a result of
11 these conversations with your supervisors?

12 A. We called the Office of Inspector General and requested
13 them to go to CASI and check out their accounting practices and
14 procedures.

15 Q. And how were they going to do that, how were you going to
16 do that or have that done?

17 A. We made a phone call, we sent them an official document and
18 they go out, they went out to check on the books.

19 Q. Who is they?

20 A. The Office of Inspector General, which we consider the OIG,
21 the OIG went out there.

22 Q. And if you could look now at government's exhibit 30, which
23 is already in evidence.

24 THE COURT: Exhibit what?

25 THE DEPUTY CLERK: 30.

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Snowden - direct

1 MR. EVERDELL: 30.

2 A. Okay.

3 Q. Blowup the text of that letter. Ms. Snowden, do you see
4 that exhibit in front of you?

5 A. Yes, I do.

6 Q. Do you recognize that document?

7 A. Yes, I do.

8 Q. What is that document?

9 A. This is an original request for the OIG, Office of
10 Inspector General, to go to the company CASI and do an audit
11 review.

12 Q. And what is the reason for the audit?

13 A. Because the numbers were fluctuating and they were
14 fluctuating quite frequently within weeks of each other, as a
15 grant specialist and my analysis that there, there could be
16 some misappropriations and some somebody needed to check it
17 out.

18 Q. What, if any, auditing requirement was in place for
19 companies receiving ATP grants already?

20 A. ATP grants, depending on how many years you have -- this
21 grant was a three year grant, you're required to have an audit
22 90 days after the first year and within 90 days of the final
23 year.

24 Q. And what was your understanding as to whether or not
25 CASI's, CASI was already having that audit at the time?

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Snowden - direct

1 A. My understanding is that they were already -- they had
2 already gotten an independent CPA and they were already -- they
3 had audit in process.

4 Q. So why was it necessary to have the Inspector General's
5 Office do an audit when an independent officer, auditor had
6 already been hired for that purpose?

7 MR. RUBINSTEIN: Objection to the why question, your
8 Honor.

9 THE COURT: Objection sustained.

10 Q. Do you know the result of the Inspector General's audit?

11 A. Yes.

12 MR. RUBINSTEIN: Objection, your Honor.

13 THE COURT: Objection sustained. You can answer yes
14 or no, but you can't go into the --

15 THE WITNESS: Okay, yes.

16 Q. All right. Ms. Snowden, are you familiar with someone
17 named Bob Benedict?

18 A. Yes.

19 Q. Who is he?

20 A. When Lee Gurfein left the company, Bob Benedict was
21 proposed to be -- there was a proposal that he would enter the
22 company as an administrative contact for CASI.

23 So I received a letter from Dr. Karron saying that he
24 was going to be the new administrative contact.

25 Q. Did he, in fact, become the administrative contact at CASI?

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1 A. He became the administrative contact at CASI for CASI, but
2 not under this grant.

3 Q. The letter that you mentioned were, what is that letter
4 from Dr. Karron asking?

5 A. The letter was -- the letter was just saying that they had
6 that I guess Lee Gurfein had left the company and that they
7 were -- they -- that he was going to -- he was hiring somebody
8 else to do the administrative work.

9 Q. And you said that this new person, Bob Benedict, was not,
10 in fact, approved as -- by the ATP people as the administrative
11 contact; is that right?

12 A. No.

13 Q. Why was he not approved?

14 THE COURT: I'm sorry, whose approval was required?

15 Q. Ms. Snowden, whose approval is required for these sorts of
16 changes?

17 A. For anybody that's going to be involved in the ATP grants,
18 ATP, we have to -- the grant officer has to approve it. He can
19 have anybody in his company do any work within his company, but
20 not on the grant by the federal government, unless the federal
21 government approves it.

22 THE COURT: I see.

23 THE WITNESS: He's a commercial company. He can do
24 whatever he wants.

25 Q. So why was, why was Mr. Benedict not approved as the

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1 administrative contact?

2 A. Because he was proposed in one of the budgets that we've
3 seen all these exhibits, but the budgets were never approved,
4 so he was never approved.

5 Q. And why were these budgets never approved?

6 A. Because the frequent changes and -- because of the frequent
7 changes, and that I had to send the OIG out to look at the
8 books so we could -- I never approved him because they were
9 fluctuating too much.

10 Q. And are you able to approve budget amendments or requested
11 budget amendments that are submitted by an unapproved contact?

12 A. No.

13 Q. All right. One moment.

14 All right. Ms. Snowden, I've handed up to you a bunch
15 of documents. First I'd like you to take a look at
16 Government's, what's been marked as identification as
17 Government's exhibit 47. Do you see that document Ms. Snowden?

18 A. Yes, I do.

19 Q. Do you recognize that document?

20 A. Yes, I do.

21 Q. And how are you able to recognize the document?

22 A. Because it was sent to me.

23 Q. And what is the document?

24 A. The document is an e-mail to myself.

25 Q. From who?

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Snowden - direct

1 A. From Dr. D. B. Karron.

2 MR. EVERDELL: Government offers Government's exhibit
3 47?

4 THE COURT: What is this document that's E-mailed to
5 you?

6 THE WITNESS: This document is the e-mail to me with
7 attachments, and attachments are revised financial status
8 reports. So it's just explaining that these are revised.

9 THE COURT: When was it e-mailed to you?

10 THE WITNESS: September 2nd, 2003.

11 THE COURT: Any objection?

12 MR. RUBINSTEIN: None.

13 THE COURT: 47 is admitted in evidence then.

14 (Government's Exhibit 47 received in evidence)

15 Q. If we can display it, please. If we can highlight just the
16 bottom portion of the e-mail.

17 Okay, Ms. Snowden, can you just tell us what this
18 e-mail says?

19 A. It says that attached are revised, are revised financial --
20 it says 269s, and that's just the document -- that's the number
21 that the federal government gives the document. It's a
22 financial status reports.

23 Q. This is where it says 269?

24 A. Yes, as revised by our project manager, Mr. Bob Benedict.

25 Q. And does e-mail say why these are being submitted?

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Snowden - direct

1 A. They said these revisions reflect changes in our books made
2 by our accountant and auditor Joan Hayes, CPA. It says --

3 Q. And what's the date of this e-mail again?

4 A. September 2nd, 2003.

5 Q. Now you said these 269s you referred to, they're revised
6 financial status reports, is that right?

7 A. Yes.

8 Q. Okay. What is a financial status report?

9 A. A financial status report is -- this is how we keep up with
10 the spending of grants. So the report is on a quarterly basis.
11 An example, calendar quarter like January through March, that
12 shows the total outlays, that's the total amount that they
13 spent during that quarter.

14 It also shows what the federal government is going
15 to -- what their portion of the funds is and what the
16 recipient's portion of the funds is, so it gives me a picture.
17 And I am able to look at that and look at a drawdown, it's
18 called like -- it's ASAP, so it's another report so I can see
19 the money that was drawn down by the grantee, the recipient. I
20 correspond just to make sure that they're taking money out at
21 the appropriate rate, they're also incorporating their cost
22 share and they're not taking too much of the federal
23 Government's portion of the funds. So everything has to
24 balance out. So this is why I do my budget analysis.

25 Q. And why does NIST require these reports?

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Snowden - direct

1 A. To make sure that the federal funds are being appropriated
2 according to the approved revised budget, or the approved
3 budget, period; make sure that it's appropriate.

4 Q. And at the time these e-mail revised financial reports were
5 sent, what was the status of the grant?

6 A. The grant had been suspended.

7 Q. If you could take a look now at government what's been
8 marked for identification as Government's exhibits 40A, 41A,
9 42A, 43A, 44, 45, and 46.

10 THE COURT: These aren't admitted in evidence yet, Mr.
11 Everdell.

12 MR. EVERDELL: No, they're not. I'm just asking her
13 to look at them for the purposes of admitting them. I'm sorry,
14 the jury --

15 THE COURT: The jury is jurist not to look at these.
16 It started with 40A?

17 MR. EVERDELL: Starting at 40A, 41A, 42A, 43A, 44, 45,
18 and 46.

19 THE COURT: Don't look at those documents until
20 they've been admitted in evidence.

21 Q. Do you see those documents, Ms. Snowden?

22 A. Yes. I want to look at one more, one more I have to get
23 through one more.

24 Q. Sure.

25 A. Okay.

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Snowden - direct

1 Q. Do you recognize those documents?

2 A. Yes.

3 Q. What are those documents?

4 A. These are financial status reports.

5 Q. Are those original financial status reports or are they
6 revised status reports?

7 A. They're both, they're both.

8 Q. Looking at the A'S only?

9 A. Yes.

10 Q. 40A, 41A, 42A, 43A -- actually, I'll tell you what, look
11 also at Government's exhibits marked for identification as
12 Government's exhibits 40, 41, 42 and 43, if you can add those
13 to your stack.

14 THE COURT: What numbers are those?

15 MR. EVERDELL: 40, 41, 42, and 43.

16 A. Okay.

17 Q. Okay. Let's just do them individually, first starting
18 first with Government's exhibit 40. Do you recognize that
19 document?

20 A. Yes.

21 Q. Okay. What is that document?

22 A. This is a financial status report.

23 Q. What quarter does that cover, that financial status report?

24 A. Block nine gives you the period covered, and it's covered
25 from October 1st, 2001 through December 31st, 2001. So it's

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Snowden - direct

1 the first quarter of the award.

2 Q. Okay. And then looking at 40A now?

3 A. Okay.

4 Q. Do you recognize that document?

5 A. Yes.

6 Q. Okay. What is that document?

7 A. This is a revision to that first -- to the original
8 financial status report.

9 Q. And --

10 THE COURT: Government 40?

11 A. For the same exact same period October 1st, 2000 -- I'm
12 looking at the wrong one. I should be looking -- for the exact
13 period, October 1st, 2001 through December 31st, 2001.

14 Q. So just to be clear, 40 is the original of 40A is the
15 revision?

16 A. Exactly.

17 Q. And they cover the same quarter?

18 A. Yes, they do.

19 Q. Okay. And looking now at 41 versus 41A?

20 A. Okay, I have it.

21 Q. Okay. Do you recognize those documents?

22 A. Yes.

23 Q. Okay. And what are they?

24 A. These are -- it's a revision.

25 Q. Which quarter do those reports cover?

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Snowden - direct

1 A. It covers the second.

2 THE COURT: Which one are we looking at now?

3 MR. EVERDELL: 41A.

4 THE COURT: Which are we looking at 41 or 41A?

5 MR. EVERDELL: Sorry, your Honor --

6 Q. Sorry. Ms. Snowden, look at 41 first.

7 A. Yes.

8 Q. Do you see that document?

9 A. Yes.

10 Q. And do you recognize it?

11 A. Yes, I do.

12 Q. What quarter does that document cover?

13 A. It's suppose -- it covers the second quarter, although he
14 has the period of performance the first.

15 THE COURT: Is this the original?

16 THE WITNESS: The second quarter, yes, it covers the
17 second quarter because it ends March 31st, 2002, so it covers
18 the second quarter of the award.

19 Q. Is that the original report or is that the revised report?

20 A. 41 is the original. 41A is the revised report.

21 Q. Does 41A cover the same time period as 41?

22 A. Yes, it does.

23 Q. And if you could look now at 42, and 42A. Do you see these
24 documents?

25 A. Yes.

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Snowden - direct

1 Q. Do you recognize those documents?

2 A. Yes.

3 Q. Looking first at 42, what period does that financial report
4 cover?

5 A. It covers the second quarter.

6 THE COURT: Second quarter of what year?

7 THE WITNESS: Of --

8 THE COURT: Of what year?

9 THE WITNESS: Of 2002.

10 THE COURT: So it covers from four --

11 THE WITNESS: April 1st, 2002 until June 30th, 2002.

12 Q. So is that the next quarter after the ones you just looked
13 at before?

14 A. Yes, it does.

15 Q. And is 42 the original or the revised financial report?

16 A. Original.

17 Q. And what about 42A?

18 A. Revised document.

19 Q. And 42A cover the same period as 42?

20 A. Yes.

21 Q. Moving to 43 and 43A.

22 A. Yes.

23 Q. Do you recognize them?

24 A. Yes.

25 Q. Looking at 43, what period does that cover for this

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Snowden - direct

1 financial report?

2 A. The third quarter of 2002 being July 1st, 2002, through
3 September 30th, 2002.

4 Q. Is that the next quarter after 40 -- the exhibits 42 and
5 42A that we looked at before?

6 A. Yes.

7 Q. Is 43 the original or the revised?

8 A. 43 is the original.

9 Q. And 43A, is that the original or the revised?

10 A. Revised.

11 Q. Does 43A cover the same period as 43?

12 A. Yes.

13 Q. Now, if you could look simultaneously at 44, 45 and 46.

14 THE COURT: Have you offered anything in evidence?

15 MR. KWOK: I'm trying to do that in a minute.

16 Q. This is our last three, I believe. Ms. Snowden, if you
17 could look first at 44?

18 A. Yes.

19 Q. What period does that correspond?

20 A. October 1st, 2002. So this is the fourth quarter of 2002
21 through December 31st, 2002.

22 Q. And what about 45?

23 A. 45 covers the first quarter of 2003 January, January 1st
24 2003 through March 31st, 2003.

25 Q. And 46?

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Snowden - direct

1 A. 46 is a second quarter 2003 covering April 1st, 2003
2 through June 30th, 2003.

3 Q. Do you recognize all these documents?

4 A. Yes.

5 Q. And did you review all these documents when they came in?

6 A. Yes, I did.

7 MR. EVERDELL: Your Honor, the government moves
8 Government's exhibits 40, 40A, 41, 41A, 42, 42A, 43, 43A, 44,
9 45 and 46 in evidence.

10 THE COURT: Exhibits 40 and 40A, 41, and 41A, 42, and
11 42A, 43, and 43A and exhibits 44, 45, 46 are admitted in
12 evidence.

13 (Government's Exhibits 40, 40A, 41, 41A, 42, 42A, 43,
14 43A, 44, 45 and 46 received in evidence)

15 Q. Okay. Let's look at, if we can put side by side,
16 Government's exhibits 40 and 40A. Put those up on the screen.

17 THE COURT: What page or --

18 MR. EVERDELL: They're one page.

19 THE COURT: One page documents? All right.

20 Q. It may in fact be a little difficult to read them from the
21 screen so I will do my best to point them to the relevant
22 sections.

23 But let's look at these documents, Ms. Snowden.
24 Looking first at Government's exhibit 40, which time period
25 does this cover again?

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Snowden - direct

1 A. It covers the fourth quarter of 2001, October 1st, 2001
2 through December 31st, 2001.

3 Q. Is that the first quarter of the award?

4 A. That's the first quarter of the award.

5 Q. And is this Government's exhibit 40 the original or the
6 revised version of the plan?

7 A. It's the original.

8 Q. Looking at first at the line I, see that, line I?

9 A. Yes.

10 Q. It says, total recipient share of net outlays?

11 A. Yes.

12 Q. What does that column mean?

13 A. That's recipient, that's the non-federal cost share of, for
14 this project.

15 Q. So that's the cost share?

16 A. Yes.

17 Q. And what is the cost share again?

18 A. The cost share is the portion of the, of the project that
19 is paid by the recipient. The recipient, it's non-federal
20 funds.

21 Q. Sorry. And what number appears there for the cost share
22 amounts in the original report?

23 A. \$12,320.

24 Q. Now, if you look at 40A in the same line, of line I?

25 A. Uh-huh.

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Snowden - direct

1 Q. Is that also the cost share amount there?

2 A. Yes.

3 Q. And what number is reflected there?

4 A. Zero.

5 Q. And what does that indicate?

6 A. That the recipient did not pay the required cost share.

7 Q. Whose signature appears at the bottom of Government's 40?

8 A. D. B. Karron, Ph.D.

9 Q. And whose signature appears at the bottom of 40A?

10 A. D. B. Karron, Ph.D.

11 Q. Now, if you -- we won't put them up on the screen, but if
12 you look at 40 versus 41A, which you testified to is the next
13 quarter, what, if anything, is reflected --

14 THE COURT: You looked at exhibit 41 and 41A.

15 MR. KWOK: I apologize, your Honor.

16 Q. If you look at exhibit 41 and 41A, you don't need to put
17 them up on the screen necessarily, but just take a look at
18 those.

19 A. Okay.

20 Q. And again at line I, is that cost share number there?

21 A. Yes.

22 Q. And if you're looking at the original 41, are there amounts
23 reflected in that line?

24 A. Yes.

25 Q. And if you look at the 41A, the revised, what number's

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Snowden - direct

1 reflected in those boxes on that same line?

2 A. Zero.

3 Q. Does that indicate the same thing you testified before?

4 A. Yes.

5 Q. And what is that?

6 A. It indicates that the original showed that the recipient
7 had incorporated and paid into the project his cost share, and
8 in the revised there was no cost share, no required cost share
9 paid, which means you're noncompliance.

10 Q. And in the remaining exhibits that we looked at, does the
11 same phenomenon appear?

12 A. Consistently.

13 THE COURT: I'm sorry, what?

14 Q. In the remaining -- I'm just trying to summarize the
15 remaining exhibits without showing each of them.

16 THE COURT: I think you want got to go through it.

17 MR. EVERDELL: I'm sorry, your Honor?

18 THE COURT: I think you should go through 42 and 43.

19 Q. All right. If you could take out 43 and 43A?

20 A. Okay.

21 Q. Sorry. 42 and 42A. You have those diagrams, Ms. Snowden?

22 A. Yes.

23 Q. Again looking at the cost share amount in the original
24 financial report, is there a cost share reported there?

25 A. Yes, it is.

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Snowden - direct

1 Q. In the revised 42A, is there a cost share reported?

2 A. No cost share reported.

3 Q. And what's the number there?

4 A. Zero.

5 Q. Finally looking at 43 and 43A. Do you have those
6 documents, Ms. Snowden?

7 A. Yes, I do.

8 Q. Again, looking at the cost share balance in the original
9 43, is there a cost share number reported there?

10 A. Yes, there is.

11 Q. And what does the revised report reflect?

12 A. It shows zero cost share.

13 Q. Thank you. If you can take a look at what's been marked as
14 government exhibit 48 marked for identification?

15 THE COURT: 48?

16 MR. EVERDELL: 48.

17 THE DEPUTY CLERK: 48.

18 THE COURT: Exhibit 48 for identification.

19 MR. EVERDELL: Not have it on the screen as of yet.

20 Q. Ms. Snowden, do you see that document?

21 A. Yes.

22 Q. Do you recognize that document?

23 A. Yes.

24 Q. What is that document?

25 A. It's a letter sent to me on October -- August 13th, 2003

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1 from Robert Benedict.

2 Q. And how do you recognize it?

3 A. 'Cause it was sent to myself, Hope Snowden.

4 MR. EVERDELL: Your Honor, the government moves to
5 admit Government's 48.

6 MR. RUBINSTEIN: I'm objecting to government exhibit
7 48, your Honor.

8 THE COURT: Objection sustained.

9 MR. EVERDELL: Your Honor, if I could lay some
10 foundational questions?

11 Q. Ms. Snowden, when you received this letter, what did you do
12 with the letter?

13 A. I reviewed the letter.

14 Q. Do you keep this letter?

15 A. Yes.

16 Q. And where do you keep the letter?

17 A. This letter, along with all other documents, are kept in
18 the original award file, the original award -- the grant file.

19 Q. And where is that grants file located?

20 A. In the grants office.

21 Q. Now, it the regular practice of your office to keep all
22 correspond that you receive, in the grants file?

23 A. Yes.

24 Q. And was this document received and maintained in the
25 regularly conducted course of business activity to keep these

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Snowden - direct

1 records?

2 A. Yes.

3 MR. EVERDELL: Your Honor, the government moves to
4 admit Government's 48.

5 MR. RUBINSTEIN: Objection, your Honor.

6 THE COURT: Is this the original copy you received?

7 THE WITNESS: Yes, this is.

8 THE COURT: Did you receive it by e-mail or something?

9 THE WITNESS: No, this, I think this -- I don't think
10 this was received by e-mail the -- yeah, I think okay, it came
11 from Bob Benedict. I don't recall if it was received by e-mail
12 or my by mail correspondence.

13 THE COURT: Well, the issue is whether you're offering
14 this for the truth of the contents, Mr. Everdell.

15 MR. EVERDELL: Your Honor, if I could have a moment?

16 THE COURT: Yes.

17 MR. EVERDELL: Your Honor, we'd like to offer this not
18 for the truth of the matter contained in it. In fact, there is
19 certain statements -- perhaps we should have a sidebar on this.

20 MR. RUBINSTEIN: Your Honor, I'm withdrawing, I'm
21 withdrawing my objection.

22 THE COURT: You're withdrawing your objection. Then
23 I'll allow it.

24 MR. EVERDELL: All right.

25 THE COURT: Exhibit 48 is admitted in evidence.

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Snowden - direct

1 (Government's Exhibit 48 received in evidence)

2 MR. EVERDELL: If we can display it on the screen.

3 THE COURT: Yes, you may.

4 Q. Ms. Snowden, you see the second paragraph there it says, we
5 acknowledge that there are disallowed expenses, and they do go
6 back to year one, they primarily come from two sources; is that
7 right?

8 A. Yes.

9 Q. What, if anything, did you do when you received this
10 letter?

11 A. I reviewed the letter, but I didn't respond to this letter.
12 So it was reviewed by myself and my project team.

13 MR. EVERDELL: One moment.

14 All right, your Honor, we'll move onto the next.

15 THE COURT: This letter was received at or about the
16 time that exhibits 40A, 41A, 42A and 43A were received by your
17 agency?

18 THE WITNESS: I would have to go back and look at the
19 e-mail.

20 THE COURT: The revised financial status reports were
21 received?

22 THE WITNESS: It was probably received during that
23 time, and this award was suspended and Bob Benedict is the one
24 who sent me this correspondence, and he wasn't approved as a
25 contact, so I couldn't correspond with him. We could review,

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,864ZKAR2ationu

Snowden - direct

1 but not correspond with him.

2 THE COURT: All right.

3 Q. All right, we can take that down.

4 Ms. Snowden, earlier you referred to an audit that was
5 already being conducted at CASI before you called the Inspector
6 General's audit?

7 A. Yes.

8 Q. Is that right? Do you know who the independent auditor's
9 name was?

10 A. Joan Hayes.

11 Q. Did you have any discussions with Joan Hayes?

12 A. Yes.

13 Q. And what did you two discuss?

14 MR. RUBINSTEIN: Objection, your Honor.

15 THE COURT: Objection sustained.

16 Q. Did Joan Hayes ask you any questions?

17 A. Yes, she did.

18 Q. What questions did she ask you?

19 MR. RUBINSTEIN: Objection, your Honor.

20 THE COURT: Objection sustained.

21 MR. EVERDELL: Your Honor, questions are not
22 statements, they're not hearsay. They're just asking
23 questions.

24 THE COURT: Yes, that's true, but I've got to put up
25 red lights so that -- you know, I'm sure the witness has been

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,864ZKAR2ationu

Snowden - direct

1 properly instructed she can't --

2 MR. EVERDELL: Yes.

3 THE COURT: She can't get into statements beyond just
4 the question.

5 MR. EVERDELL: If I can make sure we're clear on that.

6 Q. Ms. Snowden, just referring solely to what questions

7 Ms. Hayes asked you, what were those questions?

8 A. She asked me a question regarding could rent be paid with
9 federal funds; she asked me a question, could utilities be paid
10 with federal funds. I responded to her no, neither one can be
11 paid with federal funds.

12 THE COURT: When was this conversation?

13 THE WITNESS: Excuse me?

14 THE COURT: When did you have this conversation with
15 Ms. Hayes?

16 THE WITNESS: In 2002, sometime in 2002. It was with
17 Joan Hayes. So she called me on the phone sometime in 2002.
18 It was -- once she was -- she was independent CPA, so I guess
19 once he picked her to, once she was --

20 THE COURT: No, no you -- don't speculate.

21 THE WITNESS: Okay.

22 THE COURT: The jury is to disregard why, the latter
23 part of answer about why she, Joan Hayes, was hired.

24 Q. Did there come a time when you received an audit report
25 from her?

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,864ZKAR2ationu Snowden - direct

1 A. Yes.

2 Q. And when was that?

3 A. June 2003.

4 Q. What is the status of the grant to CASI as of today?

5 A. It's terminated.

6 Q. And do you know the total amount of ATP grant money that
7 CASI had drawn down before the grant was shut down?

8 A. Over a million dollars.

9 MR. EVERDELL: One moment, your Honor.

10 THE COURT: Can I just hear that question and answer
11 back.

12 (Record read)

13 THE COURT: What date was it shut down?

14 THE WITNESS: We suspends this grant in June of 2003.

15 THE COURT: Okay, thank you.

16 MR. EVERDELL: Your Honor, I have no further
17 questions.

18 THE COURT: Should we take the break now or -- I guess
19 we better take the break now and be back at 1:00 o'clock -- I
20 mean back in ten minutes.

21 10 minutes.

22 (Jury exits the courtroom)

23 THE COURT: 10 minutes. All right.

24 MR. RUBINSTEIN: Thank you, your Honor.

25 MR. KWOK: Thank you, your Honor.

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,864ZKAR2ationu

Snowden - direct

1 (Recess)

2 THE COURT: Get the jurors.

3 (Jury entering)

4 THE COURT: All right, please be seated.

5 Mr. Rubinstein.

6 MR. RUBINSTEIN: Yes, your Honor.

7 CROSS EXAMINATION

8 BY MR. RUBINSTEIN:

9 Q. Good morning, Ms. Snowden.

10 A. Good morning.

11 Q. You work in -- where is your office?

12 A. My office is in Gathursburg, Maryland.

13 Q. Now, you are the liaison to the recipient of the grants?

14 A. Yes.

15 Q. And it's your job to interpret the rules and regulation for
16 them?

17 A. Yes.

18 Q. And that's if they call and ask you a particular question
19 about a particular rule or regulation, correct?

20 A. Yes.

21 Q. Now, among the things that -- could we put up Exhibit 4,
22 page seven.

23 A number of things that the recipient responsibility
24 that is in Exhibit 4 is that a -- you were present at the what
25 you called the slide show?

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864ZKAR2

Snowden - cross

- 1 A. The kickoff.
- 2 Q. The kickoff?
- 3 A. Yes.
- 4 Q. The kickoff is a term that's usually referred to football.
- 5 The kickoff on November 8th, I believe 2001, you were present
- 6 and you presented, correct?
- 7 A. Yes.
- 8 Q. And is this a form that you submitted that you used or is
- 9 it a form that either Ms. Lide or Jane Orthwein used?
- 10 A. No, I used this -- this is part of my presentation.
- 11 Q. Okay. Now, this is prior approval, you have to notify a
- 12 grants specialist, right?
- 13 A. For prior approval, notify the grants specialist, yes.
- 14 Q. And among the things you have to notify the grants officer
- 15 for to get prior approval is if you go bankrupt?
- 16 THE COURT: Is what?
- 17 Q. Go bankrupt?
- 18 A. Yes, that's on there, yes.
- 19 Q. When you're bankrupt, you're broke, right; do you need
- 20 prior approval to go broke?
- 21 A. Well, what we say is we know these are commercial companies
- 22 that we're dealing with; therefore, if you see that you've --
- 23 you're having financial difficulties and you're going through a
- 24 bankruptcy process, we'd like to be notified ahead of time.
- 25 Q. Okay. But you tell us that this, that kickoff presentation

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864ZKAR2 Snowden - cross

1 that you're presenting, that your proposal is the Bible?

2 A. Yes.

3 Q. And that means the proposal submitted by the grantee,
4 correct?

5 A. The proposal, yes.

6 Q. But that -- and that includes the proposal is really the
7 budget, right?

8 A. It includes the budget.

9 Q. And the budget is subject to all kinds of revisions, is it
10 not?

11 A. You can propose revisions, but they still must be approved
12 in writing by the grant officer.

13 Q. And if they're approved in writing by the grant officer --

14 A. Uh-huh.

15 Q. -- then they become part of your budget, right?

16 A. They become an amendment to the original budget, yes.

17 Q. And you could revise the budget at the end of your first
18 year, can you not?

19 A. Yes.

20 Q. Because you're given \$800,000 in CASI's case, to spend on
21 the project that was approved by ATP, right?

22 A. No, it's approved -- it's approved by the grant officer.
23 She's the one who has the signature authority to, to authorize
24 funds for the federal government. So ATP is the project, but
25 the grants officer is a certifying official.

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864ZKAR2

Snowden - cross

1 Q. Okay. And the project gives the person, the grantee,
2 \$800,000, correct?

3 A. The -- the grant officer approves the budget for \$8,000.

4 THE COURT: \$800,000.

5 A. For \$800,000, approved budget, and it gives the grantee the
6 authority to spend what is approved within the budgeted
7 categories.

8 Q. When you submit a budget, you submit a budget for the total
9 of \$800,000 right?

10 A. When you propose a change, it's for the total amount of
11 \$800,000.

12 Q. But your original budget --

13 A. Uh-huh.

14 Q. -- that you submit --

15 A. Uh-huh.

16 Q. -- you submit -- CASI submitted a budget for 800,000 and
17 the government, whichever agency it was, deposited \$800,000 in
18 a bank account for CASI to use?

19 A. CASI submitted a budget for a total of \$2 million, with
20 money delegated each year. The first year was \$800,000 for
21 CASI to use within the approved proposal and the approved
22 budget categories. Anything outside of what is approved is
23 considered a proposed revision. And if you revise it in any
24 way or manner, it needs to be approved in writing by the grant
25 officer.

864ZKAR2

Snowden - cross

1 THE COURT: But that applies to the line items, is
2 that right?

3 THE WITNESS: Yes.

4 THE COURT: So \$800,000 comprised of so many line
5 items.

6 THE WITNESS: Yes.

7 THE COURT: Changes in the line items require
8 approval.

9 THE WITNESS: If they're over 10 percent, yes.

10 Q. So, we'll get back to the 10 percent.

11 A. Sure.

12 Q. But let's -- so if the grantee, while they have a budget
13 with line items for various things that adds up to \$800,000,
14 right?

15 A. Yes.

16 Q. If the grantee doesn't spend the 800,000 in the first year,
17 what happens to the money?

18 A. If he doesn't spend all of the \$800,000, he can request a
19 revised budget. His first year will have the actual amounts,
20 and the out years which will be year two and three. He can
21 incorporate the money that was unspent into years two and
22 three. That budget has to be reviewed by the project team, and
23 it has to be approved in writing by the grant officer.

24 Q. Is there -- have you ever had -- how long have you been
25 doing this, Ms. Snowden?

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864ZKAR2

Snowden - cross

1 A. Eight-and-a-half years.

2 Q. Have you ever had an occasion where a grantee returned
3 money to the government that was unused pursuant to the grants?

4 A. Yes.

5 Q. And on how many occasions?

6 A. Well, I've been doing it eight-and-a-half years. Quite a
7 bit. A lot of times that you start a project, and you say I
8 need this much money, and then you may not use the money, so
9 it's returned to the government, and we reput it back into our
10 program for future use.

11 (Continued on next page)

12

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8647KAR3

Snowden - cross

1 BY MR. RUBINSTEIN:

2 Q. And if the money is spent, the \$800,000, in the first year,
3 on what is allowable expenditures, that's OK, correct?

4 A. If it's spent on allowable approved budget, it is OK.

5 Q. Well, Dr. Karron submitted a budget where he was to receive
6 \$175,000 in salary, correct?

7 A. Yes.

8 Q. And that was approved.

9 A. Yes.

10 Q. If he wanted to increase his salary by \$80,000, which is 10
11 percent of the approved budget, to \$255,000, he wouldn't need
12 any approval to do that, correct?

13 A. He can move it among budget categories without the
14 approval, within 10 percent, but he must notify; we ask for
15 notification to the federal government.

16 THE COURT: Is it 10 percent of the total or is it 10
17 percent of the line item?

18 THE WITNESS: No, 10 percent of the annual budget,
19 which is \$80,000. He can move the line items within 80,000.

20 THE COURT: Each title?

21 THE WITNESS: Total, so not each. So it can be total.
22 So, he can move money to the equipment, money to materials and
23 supplies, but it couldn't go over \$80,000.

24 THE COURT: In total.

25 THE WITNESS: In total.

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Snowden - cross

1 MR. RUBINSTEIN: In other words he would have to --

2 THE COURT: \$80,000, could it be allotted to any
3 single line item which would bring the line item up to say a
4 hundred percent of what the line item was?

5 THE WITNESS: It's not usually done, but the 10
6 percent rule said he can move it.

7 THE COURT: Does he need prior approval for that?

8 THE WITNESS: No. We ask that we be notified, but he
9 does not need prior approval.

10 Q. In the original budget that he submitted, which is in
11 evidence as Exhibit 10B, do you have that there, ma'am?

12 A. I have a 10A. I don't have a 10B.

13 Q. Let me see if I can get somebody to help you get the 10B.

14 A. I found 10B. I have it right here.

15 Q. Now, in that document, which is in the exhibit book as
16 Government Exhibit 10B, on the second page it says personnel,
17 correct?

18 A. Yes.

19 Q. Now, in fact in that budget the project manager,
20 Mr. Gurfein, was to get \$100,000, correct?

21 A. Yes.

22 Q. And that was to put 75 percent of their time, his time,
23 into the project.

24 A. Well, his annual salary was \$100,000.

25 Q. Telling you that he is only going to spend 75 percent of

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1 his time to the project, correct?

2 A. That's the percentage of time to the project, 75 percent.

3 Q. And Dr. Karron is to spend a hundred percent of his time.

4 A. Yes.

5 Q. And how many hours a week does a hundred percent working,
6 how many hours a week --

7 THE COURT: I don't see the relevance of that
8 question.

9 MR. EVERDELL: Objection.

10 THE COURT: Objection sustained. Let's go ahead.
11 It's an annual amount. Please go ahead.

12 Q. Well, did you ever discuss with Dr. Karron as to how many
13 hours a week he was expected to devote to the project?

14 A. No.

15 Q. And also on that page they have \$100,000 which was approved
16 for math and graphic programmers, TBD. And that was approved,
17 right?

18 A. Yes, to be determined.

19 Q. What does TBD mean?

20 A. To be determined.

21 Q. And that was approved.

22 A. Yes.

23 Q. Now, did you learn that there were people in the first year
24 who were not listed on this budget that were working at CASI?

25 THE COURT: Working at CASI or on the program?

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1 MR. RUBINSTEIN: On the program.

2 A. This narrative reflects that there is going to be one, two,
3 three, four people that's going to be working on this project.

4 Two people are to be determined. So you have two people that
5 they don't have a name. But only four people on this project.

6 Q. Well, in fact it has a systems administrator, correct?

7 A. Yes.

8 Q. It has Dr. Karron.

9 A. Um-hum.

10 Q. It has Mr. Gurfein.

11 A. Yes.

12 Q. And it has a math and graphics programmer. Those are the
13 two people there, right? So that's a total of five?

14 A. No.

15 THE COURT: Systems administrator.

16 A. The systems administrator, it's a systems administrator
17 network programmer. It's one title. This budget only reflects
18 four budget, four salaries, so that's one title. That's why it
19 was indented.

20 Q. There came a time that you learned that there were other
21 people working on the ATP project. Did you have any
22 conversation with Dr. Karron about these -- well, withdrawn.

23 You learned that other people were working on the
24 project, correct, on the ATP project?

25 THE COURT: Did you learn that?

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1 THE WITNESS: He requested a revised budget to add
2 people that had to be approved, and it was later approved, but,
3 no, he can't just tell me I'm adding people.

4 THE COURT: That isn't what you are being asked. Did
5 you learn that more than four people were working on the ATP
6 project at any time?

7 THE WITNESS: No, I just assumed that these were the
8 four that were going to be working on the project.

9 Q. Well, didn't you get together with your team Ms. Lide and
10 Ms. Orthwein and discuss what was going on with the CASI ATP
11 grant and what was going on at CASI?

12 A. We had discussions.

13 Q. And did you learn in those discussions that there were
14 people working on the ATP project who were not approved by your
15 office?

16 A. No.

17 Q. Did you ever hear of a man named Jim Cox?

18 A. Yes.

19 Q. And was he approved to work on the project?

20 A. I don't recall. I would have to look at the other approved
21 document.

22 Q. Now, Gurfein was approved for \$100,000 --

23 A. Yes.

24 Q. -- as the project manager. Did you ever approve someone
25 else as a project manager after Gurfein?

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1 A. No, not that I recall.

2 Q. Do you know the name Peter Ross?

3 A. I'm familiar with the name.

4 Q. And do you know who replaced Gurfein when he left the
5 project?

6 A. There was -- no, I don't know who replaced Gurfein. There
7 was never an approved person managing.

8 Q. Well, as the person who was involved with helping CASI, did
9 you inquire as to who would be the project manager after
10 Gurfein left?

11 A. Once Lee Gurfein left -- and I'm not sure on the date that
12 he left -- it was up to Dr. Karron -- this is a commercial
13 business -- to let us know that he was searching for somebody
14 to replace Lee Gurfein, and then if he wants that person to
15 replace them, officially he has to request it, put in a revised
16 budget to add that person's name, and it has to be approved in
17 writing by the grant officer.

18 So, within his commercial company he can add anyone
19 that he likes, but to work on this project it has to be
20 approved by the grant officer. So, we don't get into his
21 personal, his commercial business. He could have had a lot of
22 people working within his company but not necessarily on this
23 ATP-approved project.

24 Q. Did you ever tell Dr. Karron that you were not approving
25 Bob Benedict as a replacement as the project manager?

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1 A. What happened was --

2 Q. No, no. Did you hear the question?

3 A. Yeah, I heard the question. No, I never told him that he
4 was not going to be approved. The budget was not approved,
5 which would have incorporated him. Therefore, underlying he is
6 not approved.

7 THE COURT: Did he ever ask for him to be approved?

8 THE WITNESS: He sent correspondence, and in the
9 correspondence he said that Bob Benedict was going to be the
10 new project manager, so that's what he wanted. That is who was
11 representing CASI as a company, and that's fine, he can
12 represent his company, but until he was approved in our budget,
13 he wasn't an authorized official.

14 THE COURT: Did he ever ask you to approve him in the
15 budget?

16 THE WITNESS: Yes, he did try to incorporate him into
17 the budget.

18 THE COURT: What?

19 THE WITNESS: Yes, he did try to incorporate him into
20 the budget.

21 THE COURT: OK.

22 Q. But he was never approved?

23 A. He was never approved because the budget was never
24 approved.

25 Q. But he was never approved, correct?

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1 A. No, he was never approved.

2 THE COURT: And when did he ask for him to be
3 approved?

4 THE WITNESS: There is a letter, and I know it's in
5 one of these exhibits, when he told us he was getting a new, I
6 guess, administrator.

7 THE COURT: I just want to know the date.

8 THE WITNESS: I have no idea what the date was.

9 THE COURT: Don't you have the records there that show
10 it?

11 THE WITNESS: OK, I don't know where it would be
12 located.

13 THE COURT: Well, I can't understand whether the
14 question and answer are relevant to the jury's determination.

15 Q. CASI was approved to spend \$100,000 on the project manager,
16 correct?

17 A. Yes, they were approved. The salary was \$100,000, and it
18 was a hundred percent, so yes.

19 Q. It was in fact 75 percent, right?

20 A. It was 75 percent of \$100,000 salary.

21 Q. Dr. Karron was not supposed to -- he wasn't being paid as
22 the project manager, correct?

23 A. Correct.

24 Q. You have a business, so is it your testimony that \$100,000,
25 because you didn't approve Bob, a project manager during a

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1 point in time, that that 100,000 shouldn't be spent on the
2 grant?

3 MR. EVERDELL: Objection.

4 THE COURT: I will allow the question.

5 A. Could you repeat the question, please?

6 Q. If Lee Gurfein had continued as the project manager after
7 the first year, there would be no problem with his being
8 approved?

9 A. Lee Gurfein was approved throughout this budget, so Lee
10 Gurfein was approved.

11 Q. Do you know what Lee Gurfein's credentials were to be a
12 project manager?

13 A. His résumé was part of the proposal package, yes.

14 Q. And was Bob Benedict's résumé submitted to propose him as a
15 project manager?

16 A. I don't recall.

17 Q. Isn't it a fact that Bob Benedict was far superior?

18 MR. EVERDELL: Objection.

19 THE COURT: Objection sustained. Go ahead.

20 Q. Do you recall what salary was requested for Bob Benedict?

21 A. No.

22 Q. Now, were you aware of Dr. Karron's background as to
23 finance when the grant was awarded?

24 A. No, I'm the grant specialist. When it comes to his
25 background, that's not for me to review. I'm the grant

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1 specialist, I do the budget analysis. I don't look at people's
2 backgrounds. I'm sure it was looked at by the scientists and
3 the project team who reviewed this proposal and approved it.

4 Q. As the grant specialist, could you provide a special
5 condition of the award that a grantee be audited more than once
6 a year?

7 A. As a grant specialist you can incorporate special workd
8 conditions that have to be approved by the grant officer, but
9 the federal government can authorize an audit any time they
10 feel that funds are being misappropriated. So, it can be more
11 than once, it could be twice, it could be three times.

12 Q. That wasn't the question.

13 A. The question is yes.

14 Q. The question is: As a special condition, when the person
15 gets the money, as a special condition they're advised that
16 they are going to be audited more than once a year, correct?

17 A. As a special award condition you are audited according to
18 your project.

19 MR. EVERDELL: Objection.

20 THE COURT: Objection sustained to the form of the
21 question. I don't think it was --

22 Q. Most projects like in this case CASI were audited at the
23 end of their first year, correct?

24 A. They have to get an independent CPA, they're required to,
25 the company, and, yes, they get audited. Within 90 days they

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1 have to give the federal government a copy of an audit at the
2 end of the year, within 90 days after the end of their year.

3 Q. And are there companies that get ATP awards that as a
4 condition of the award they are to be audited more than once a
5 year?

6 A. Under federal regulations the grant office has the right to
7 order an audit by the office of Inspector General whenever they
8 feel that funds are being misappropriated, so, yes, across the
9 board with any grant of federal funds you can be audited more
10 than once a year.

11 Q. Do you understand the question, ma'am, about the special
12 conditions --

13 MR. EVERDELL: Objection.

14 Q. -- when you get an award, that there are special conditions
15 as part of the award?

16 THE COURT: You're not asking your question
17 appropriately.

18 MR. RUBINSTEIN: Then it's my fault. I apologize to
19 Ms. Snowden.

20 THE COURT: I think she is answering the question as
21 she interprets it, but you have to ask the question properly.

22 Q. As part of the grant, giving a grant, can there be special
23 conditions imposed on the grantee?

24 THE COURT: This woman does not make the grants; she
25 is a person who oversees a grant once it's made. Am I correct?

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1 THE WITNESS: Yes.

2 THE COURT: You don't determine whether or not the
3 grant will be issued, is that right?

4 THE WITNESS: Yes.

5 THE COURT: That's done by someone else in the --

6 THE WITNESS: Another team reviews the proposal and
7 decides to give the money, and then our office administers it.

8 THE COURT: Is that clear? Did you follow that,
9 Mr. Rubinstein? She does not make the grant. All she does is
10 administer a grant once it is made. Another team decides about
11 making the grant.

12 Q. But there are situations, are there not, Ms. Snowden, where
13 you who administers the grant -- there are in place special
14 conditions that you have to administer, right?

15 MR. EVERDELL: Objection.

16 THE COURT: I will allow the question.

17 A. Could you repeat the question, please?

18 THE COURT: In some grants are there special
19 conditions that you have to administer?

20 THE WITNESS: In some grants you have special work
21 conditions. In all grants there are special work conditions
22 incorporated into the grant.

23 Q. And from time to time is one of the special conditions that
24 the grantee, the person getting the money, will be audited more
25 than once a year?

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1 THE COURT: Do you know the answer to that? Have you
2 ever had a grant that had a special condition in it that
3 required the company to provide an audit more than once a year?

4 THE WITNESS: No. You are program specific, so up
5 front you consider that everything is going to go smoothly, so,
6 no, there is not -- you just follow the audit guidelines, so,
7 no, there is not a special work condition that is usually put
8 in place that you have an audit. We do have conditions that we
9 can -- you can't -- you can't take any money without getting
10 our approval, but when it comes to audits, no.

11 Q. You said that Ms. Hayes was an independent auditor,
12 correct?

13 A. Yes.

14 Q. You had contact with Ms. Hayes?

15 A. Yes.

16 Q. Over what period of time did you have contact with Ms.
17 Hayes?

18 A. The year 2002, over a period of time.

19 Q. Do you have any notes or memorandum that would enable you
20 to be a little more precise as to what period of time in 2002?

21 A. No, I don't.

22 Q. Now, could you estimate for us how many times you spoke to
23 her during this period in 2002?

24 A. Probably a handful of times, so guestimate five.

25 Q. And among the times you spoke to her, I think you said you

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1 spoke to her about the rent and some other expense, correct,
2 whether or not it was allowable?

3 A. She called and asked me a question, yes.

4 Q. And when about was that, ma'am?

5 A. In 2002.

6 Q. Was it the winter? Spring? Summer or fall?

7 MR. EVERDELL: Objection.

8 THE COURT: Do you know?

9 THE WITNESS: No. I mean you have to -- you can
10 assume that the year ended September 30, 2002, so it's anything
11 after September 30, 2002, when the grant ended and when you are
12 supposed to get an independent auditor to audit your books.

13 THE COURT: She was an auditor?

14 THE WITNESS: Yes.

15 THE COURT: So you assumed she came in after the end
16 of the year.

17 THE WITNESS: Yes.

18 Q. Were you aware that she was the accountant for CASI?

19 A. That she was the independent auditor for CASI, independent
20 CPA. She was doing the audit.

21 Q. But you are supposed to have an independent auditor,
22 correct?

23 A. You have to get an -- the federal grant pays for an
24 independent auditor to audit the books, yes.

25 Q. And is it fair to say that a person who is the accountant

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1 for the company cannot be an independent auditor for the
2 company?

3 MR. KWOK: Objection, your Honor.

4 MR. EVERDELL: Objection, your Honor. It's outside of
5 the --

6 THE COURT: Do you know whether she was an accountant?

7 THE WITNESS: I didn't know she was an accountant to
8 the company. All I know is that she called me as an
9 independent CPA for the company, and that's who she was
10 representing the company as an independent. Any other, I have
11 no idea.

12 Q. And you are aware of requests for change in costs for
13 equipment to be changed, is that correct?

14 A. I am aware that there was a request to add a piece of
15 equipment.

16 Q. And was that approved?

17 A. No.

18 Q. And was the reason it wasn't approved is because the
19 request wasn't in writing?

20 A. The reason why it wasn't approved -- he sent in a revised
21 budget. I had questions for the budget that he sent in. He
22 sent me another budget. So, he frequently sent in budgets, so
23 none of them ever got approved.

24 Q. But he had a right to spend up to \$80,000 in additional
25 monies for equipment without approval, correct?

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1 A. He had a right to move additional money within 80 percent
2 of the annual budget without approval but with notification,
3 but it has to -- you can spend it within the budget, but you
4 can't add items to the budget.

5 When you come in with a proposal, you have an itemized
6 budget down to, for example, the pencils you want to buy.
7 That's the only thing approved within that budget, so you can't
8 just arbitrarily go out and say I want to buy a computer if a
9 computer wasn't incorporated and approved within your approved
10 budget. The categories have to already exist. You can't add
11 categories. If it's a zeroed out category, you can't add that.
12 So, then he would already have to be approved.

13 Q. Did the CASI budget have a category called equipment?

14 A. Yes, they did.

15 Q. Did you testify that they had originally \$375,000 approved
16 for the purchase of equipment?

17 A. I would have to look at it to know exactly what it says.

18 Q. But do you recall testifying that they submitted a revision
19 for reduction in the equipment when the prosecutor asked you
20 questions?

21 A. He asked me questions. But like I said, what exhibit? So
22 I can look. I want to make sure I'm correct. Tell me the
23 exhibit and we can talk about it.

24 Q. Well, before you look at an exhibit, are you aware as you
25 sit there now that there was in the budget a category for

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1 equipment?

2 A. Yes.

3 MR. EVERDELL: Objection.

4 THE COURT: Which budget are you talking about?

5 MR. RUBINSTEIN: All of the budget submitted by CASI.

6 MR. EVERDELL: Objection, your Honor. The documents
7 are in evidence. We can look at the documents.

8 THE COURT: Let's deal with it document by document so
9 the jury can follow it.

10 MR. RUBINSTEIN: Can I please do it my way? It might
11 be a little faster than taking out documents.

12 MR. EVERDELL: Your Honor, I think it would be
13 confusing.

14 MR. RUBINSTEIN: Confusing?

15 Q. Does every budget for CASI have a line for equipment? Yes
16 or no?

17 THE COURT: Yes.

18 MR. RUBINSTEIN: Thank you, Judge.

19 THE COURT: Every budget has an item for equipment and
20 a number in it.

21 MR. RUBINSTEIN: Thank you, Judge.

22 THE COURT: All right.

23 MR. RUBINSTEIN: So, do I have to show each one of
24 those on the screen?

25 THE COURT: Which one do you want?

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1 Q. So, there was already established an equipment line,
2 correct?

3 A. According to testimony, yes, there was, and the judge said
4 there was, and there is.

5 Q. You don't recall testifying to that with the prosecution
6 asked you questions?

7 A. I testified to the fluctuation of the monetary values in
8 each category. I have to look at a budget as I would do in my
9 office, and I can tell you specifically. But there is a lot of
10 budget here.

11 Q. So, now that we concede that equipment is in the budget,
12 Dr. Karron did not need your approval if he was buying a piece
13 of equipment that cost less than \$80,000 above whatever the
14 number is that he was budgeted for equipment, right?

15 A. He did not need my approval, but the equipment that he
16 requested was over 10 percent. That's why he had to put in and
17 request a revised budget. If it was just within the 80,000, I
18 would never have told him you have to revise your budget.
19 Therefore, it was over \$80,000.

20 Q. What was that piece of equipment that he was requesting?

21 A. I don't recall.

22 Q. Do you have any note about it anywhere?

23 A. No.

24 Q. Do you have any e-mail about that?

25 A. No, I don't.

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1 Q. You told us about --

2 THE COURT: Do you know what type of equipment it was?

3 THE WITNESS: No, I just know it was over the 10
4 percent. That's why I told him, when we discussed it, that he
5 had to do a revised budget, because under the 10 percent I
6 would have said just give us notification and we could have
7 moved on. It was over 10 percent.

8 Q. So, with a significant revised budget did you approve that
9 amount for the equipment that he had requested?

10 A. The first? No.

11 Q. Even though -- did you make an evaluation as to whether or
12 not that equipment would aid and assist the project that he was
13 working on?

14 A. When you do a revised budget you not only look at that one
15 line, I look at all the line items, because I have to make sure
16 that none of the numbers change and that at the end of the day
17 that everything still equals to the amount of money for that
18 annual year. The numbers fluctuated. I looked at them, and I
19 had to look at what he had attached, so it never got approved
20 because there were other changes in the budget that we didn't
21 know about.

22 Q. He never asked for more than \$800,000 though, correct?

23 A. It doesn't make a difference.

24 Q. Did he ever ask for more than \$800,000, yes or no?

25 A. He never asked to exceed the annual approved amount for

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1 that year.

2 THE COURT: Which was 800,000.

3 THE WITNESS: Which was 800,000, yes.

4 Q. So you could not -- could you approve -- if he submitted
5 ten requests for revisions, could you approve one and reject
6 nine, or do you have to accept them all to get the revision?

7 MR. EVERDELL: Objection.

8 THE COURT: The manner in which this comes to your
9 attention is by way of a proposed revised budget.

10 THE WITNESS: Yes.

11 THE COURT: Is doesn't come in single items.

12 THE WITNESS: No, it comes in a budget, and every
13 category has a number in it, and they all have to equal.

14 THE COURT: But in addition you received an oral
15 request, is that right, from Dr. Karron for equipment?

16 THE WITNESS: No. What he did -- after Jay and B.J.
17 did the site visit, he called me and said he wanted to add
18 funds for equipment, and so then I told him, I said since you
19 want to add money, I said --

20 You ask how much it is, and I don't recall the amount.
21 I said, well, that's over \$80,000, you must submit a revised
22 budget.

23 THE COURT: Approximately when was that conversation?

24 THE WITNESS: In November of 2002, soon after the site
25 visit.